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FEDERAL TRADE COMMISSION
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DISTRICT OF NEVADA
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,)

Plaintiff,

CV-S-03-1306-LRH-RJJ

v.

CHRISTOPHER BAITH,)

COSME MONARREZ, JR., and)

SORABH VERMA,)

Defendants.)

**[PROPOSED] STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT
INJUNCTION AS TO DEFENDANT COSME MONARREZ, JR.**

Plaintiff Federal Trade Commission ("Commission") filed its
Complaint alleging that Defendants Cosme Monarrez, Jr.,
Christopher Baith, and Sorabh Verma created and disseminated
deceptive unsolicited commercial email, commonly known as spam,

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3 in violation of Section 5 of the Federal Trade Commission Act
4 ("FTC Act"), 15 U.S.C. § 45.

5 Plaintiff Federal Trade Commission and Defendant Monarrez
6 have agreed to entry of this proposed Stipulated Final Judgment
7 And Order For Permanent Injunction as to Defendant Cosme
8 Monarrez, Jr. ("Order") to resolve all matters in dispute in this
9 action.
10

11 **FINDINGS**

- 12 1. This Court has jurisdiction over the subject matter of
13 the case and over the parties hereto;
- 14 2. The Complaint states claims upon which relief may be
15 granted against Defendants under Sections 5 and 13(b)
16 of the FTC Act, 15 U.S.C. §§ 45 and 53(b);
- 17 3. Venue lies properly with this Court under 28 U.S.C. §
18 1391(b) and (c) and 15 U.S.C. § 53(b);
- 19 4. This Order is in the best interest of all of the
20 parties in this action, and after weighing the equities
21 is in the public interest;
- 22 5. Defendant enters into this Order freely and without
23 coercion, and acknowledges that he understands the
24 provisions of this Order and is prepared to abide by
25 them;
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- 27 6. Plaintiff and Defendant waive all rights to seek
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3 appellate review or otherwise challenge or contest the
4 validity of this Order. The parties agree that nothing
5 herein shall preclude any party from seeking appellate
6 review of any proceeding to enforce this Order, but
7 agree not to challenge or contest, in any manner, the
8 validity of this Order in such a proceeding. Defendant
9 further waives and releases any claim he may have
10 against Plaintiff, its employees, representatives, or
11 agents as of the date of this Order;
12

13 7. Defendant has agreed that he will not seek to obtain
14 attorneys' fees as a prevailing party under the Equal
15 Access to Justice Act, 28 U.S.C. § 2412, amended by PL
16 104-121, 110 Stat. 847, 863-64 (1996), and Defendant
17 further waives any rights to attorneys' fees that may
18 arise under said provision of law; and
19

20 8. The acts and practices of Defendant were or are in or
21 affecting commerce, as "commerce" is defined in Section
22 4 of the FTC Act, 15 U.S.C. § 44.

23 **DEFINITIONS**

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

26 A. "Defendant" means Cosme Monarrez, Jr., including but
27 not limited to the use of aliases and names under which
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he currently does business or may do business in the future.

B. "Internet" means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: email, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.

C. "Unsolicited commercial email" means an electronic mail message that consists of or contains a communication advertising, promoting, soliciting, offering, or offering to sell any product or service, and that is not requested by the addressee or recipient or sent pursuant to a pre-existing business or personal relationship between the sender and the addressee or recipient of the email.

D. "Videotext services" means visual (and possibly audio) information and entertainment services offered over the Internet through individual Websites.

E. "Webpage" is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser software. Every Webpage on the World Wide Web is

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3 identified by a globally unique address.

4 F. "Website" is a set of electronic documents, usually a
5 home page and subordinate pages, readily viewable using
6 a computer by anyone with access to the Internet,
7 standard Internet browser software, and knowledge of
8 the Website's location or address.

9
10 G. "World Wide Web" or "Web" means a system used on the
11 Internet for cross-referencing and retrieving
12 information.

13 **ORDER**

14 I.

15 **INJUNCTIONS AGAINST MISREPRESENTATIONS**

16 **IT IS THEREFORE ORDERED** that in connection with the
17 advertising, promotion, offering for sale, sale, or delivery of,
18 or billing or collecting for, any videotext service, Defendant is
19 hereby permanently restrained from:
20

21 A. Misrepresenting any material fact; and

22 B. Sending or causing to be sent any email, including but
23 not limited to unsolicited commercial email, that
24 misrepresents the identity of the sender (e.g.,
25 falsifying information in the "from" line of an email)
26 or the subject of the email (e.g., falsifying the
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3 information contained in the "subject" line of the
4 email).

5 **II.**

6 **ACCESS TO BUSINESS PREMISES**

7 **IT IS FURTHER ORDERED** that, for a period of five (5) years
8 from the date of entry of this Order, for the purpose of further
9 determining compliance with this Order, Defendant shall permit
10 representatives of the Commission, within three (3) business days
11 of receipt of written notice from the Commission:
12

13 A. Access during normal business hours to any office, or
14 facility storing documents, of any business where

- 15 1. Defendant Monarrez is the majority owner of the
16 business or directly or indirectly manages or
17 controls the business, and
18 2. the business is engaged in the advertising,
19 promotion, offering for sale, sale, or delivery
20 of, or billing or collecting for, any videotext
21 service.
22

23 In providing such access, Defendant shall permit representatives
24 of the Commission to inspect and to copy all documents relevant
25 to any matter contained in this Order, and shall permit
26 Commission representatives to remove documents relevant to any
27 matter contained in this Order for a period not to exceed five
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3 (5) business days so that the documents may be inspected,
4 inventoried, and copied; and

5 B. To interview the officers, directors, and employees,
6 including all personnel involved in responding to
7 consumer complaints or inquiries, and all sales
8 personnel, whether designated as employees,
9 consultants, independent contractors or otherwise, of
10 any business to which Subsection A of this Section
11 applies, concerning matters relating to compliance with
12 the terms of this Order. The person interviewed may
13 have counsel present.
14

15 *Provided that, upon application of the Commission and for*
16 *good cause shown, the Court may enter an ex parte order granting*
17 *immediate access to Defendant's business premises for the*
18 *purposes of inspecting and copying all documents relevant to any*
19 *matter contained in this Order.*
20

21 **III.**

22 **COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE**

23 **IT IS FURTHER ORDERED** that the Commission is authorized to
24 monitor Defendant's compliance with this Order by all lawful
25 means, including but not limited to the following means:

26 A. The Commission is authorized, without further leave of
27 court, to obtain discovery from any person in the
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3 manner provided by Chapter V of the Federal Rules of
4 Civil Procedure, Fed. R. Civ. P. 26 - 37, including the
5 use of compulsory process pursuant to Fed. R. Civ. P.
6 45, for the purpose of monitoring and investigating
7 Defendant's compliance with any provision of this
8 Order.

9
10 B. The Commission is authorized to use representatives
11 posing as consumers and suppliers of Defendant,
12 Defendant's employees, or any other entity managed or
13 controlled in whole or in part by Defendant, without
14 the necessity of identification or prior notice.

15 C. Nothing in this Order shall limit the Commission's
16 lawful use of compulsory process, pursuant to Sections
17 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
18 investigate whether Defendant has violated any
19 provision of this Order or Section 5 of the FTC Act, 15
20 U.S.C. § 45.
21

22 **IV.**

23 **COMPLIANCE REPORTING BY DEFENDANT**

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

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27 A. For a period of five (5) years from the date of entry
28 of this Order, Defendant shall notify the Commission of

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the following:

1. Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;
2. Any changes in Defendant's employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business or employment; and
3. Any proposed change in the structure of any business entity owned or controlled by Defendant, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change.

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury,

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setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:

1. Defendant's then current residential address and telephone number;
2. Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Section V of this Order; and
4. A statement describing the manner in which Defendant has complied and is complying with the prohibitions contained in Section I of this Order.

C. Upon written request by a representative of the Commission, Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Order.

D. For the purposes of this Order, Defendant shall, unless otherwise directed by the Commission's authorized

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representatives, mail all written notifications to the
Commission to:

Associate Director for the Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW Room H-238
Washington, DC 20580

Re: FTC v. Christopher Baith, Cosme Monarrez, Jr., and Sorabh
Verma

E. For the purposes of this Section, "employment" includes
the performance of services as an employee, consultant,
or independent contractor; and "employers" include any
individual or entity for whom Defendant performs
services as an employee, consultant, or independent
contractor.

F. For purposes of the compliance reporting required by
this Section, the Commission is authorized to
communicate directly with Defendant.

V.

DISTRIBUTION OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, for a period of five (5) years
from the date of entry of this Order, Defendant shall:

A. Provide a copy of this Order to, and obtain a signed
and dated acknowledgment of receipt of same from, each
officer or director, each individual serving in a
management capacity, all personnel involved in
responding to consumer complaints or inquiries, and all

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sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where

1. Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and
2. the business is engaged in the advertising, promotion, offering for sale, sale, or delivery of, or billing or collecting for, any videotext service, or assisting others engaged in these activities.

B. Maintain for a period of three (3) years after creation, and upon reasonable notice, make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in Subsection A of this Section.

VI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendant of this Order as entered by the Court, Defendant shall submit to the Commission a truthful sworn

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3 statement, in the form shown on Appendix A, that shall
4 acknowledge receipt of this Order.

5 **VII.**

6 **RECORD KEEPING PROVISIONS**

7 **IT IS FURTHER ORDERED** that, for a period of eight (8) years
8 from the date of entry of this Order, in connection with the
9 advertising, promotion, offering for sale, sale, or delivery of,
10 or billing or collecting for, any videotext service Defendant and
11 his agents, employees, officers, corporations, successors, and
12 assigns, and those persons in active concert or participation
13 with them who receive actual notice of this Order by personal
14 service or otherwise, are hereby restrained and enjoined from
15 failing to create and retain the following records:
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- 17
- 18 A. Accounting records that reflect the cost of goods or
19 services sold, revenues generated, and the disbursement
20 of such revenues;
 - 21 B. Personnel records accurately reflecting: the name,
22 address, and telephone number of each person employed
23 in any capacity by such business, including as an
24 independent contractor; that person's job title or
25 position; the date upon which the person commenced
26 work; and the date and reason for the person's
27 termination, if applicable;
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- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly, indirectly, or through any third party) and any responses to those complaints or requests; and
- E. Copies of all sales scripts, training materials, advertisements, Websites, Webpages, or other marketing materials.

VIII.

EFFECT OF EXPIRATION OF PARTS OF THE ORDER

IT IS FURTHER ORDERED that the expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order.

IX.

THE ORDER CONSTITUTES FINAL JUDGEMENT

The parties hereby stipulate and agree, without further notice to any of them, to entry of the foregoing Order, which shall constitute a final judgment in this action. Defendant hereby waives any claim he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by PL 104-121, 110 Stat.

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847, 863-64 (1996), concerning the prosecution of this action to the date of this Order.

X.

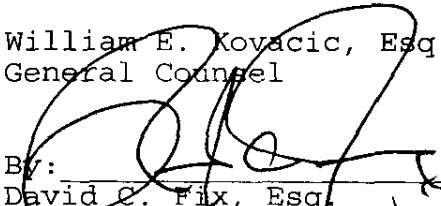
COURT'S JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO STIPULATED

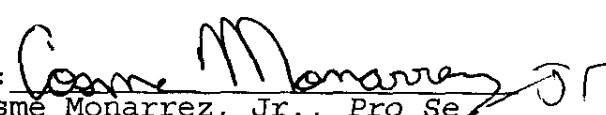
William E. Kovacic, Esq.
General Counsel

Dated: *15 October 2003*

By: 
David C. Fix, Esq.
Renard C. François, Esq.
Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Telephone: (202) 326-3298 (Fix)
Telephone: (202) 326-2251 (François)
Facsimile: (202) 326-3395

Cosme Monarrez, Jr.

Dated: *4-9-03*

By: 
Cosme Monarrez, Jr., Pro Se

There being no just cause for delay, this proposed Order is hereby entered this 28th day of November, 2003.

IT IS SO ORDERED.

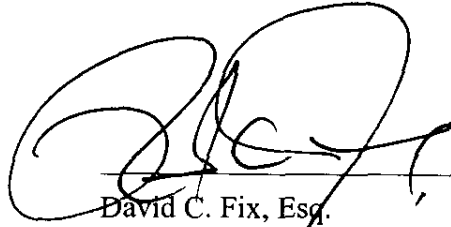

United States District Judge
District of Nevada

CERTIFICATE OF SERVICE

I hereby certify that a copy of

- (i) the Complaint and
- (ii) [Proposed} Stipulated Final Judgment and Order for Permanent Injunction as to Defendant Cosme Monarrez, Jr.

was served, via Federal Express, on Cosme Monarrez, Jr., 3611 Elegant Saint Court, Las Vegas, Nevada 89115 on Thursday, October 16th, 2003.

A handwritten signature in black ink, appearing to read 'D. C. Fix', written over a horizontal line.

David C. Fix, Esq.

Renard C. Francois, Esq.