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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

-against-

03-CV-8511 (DAB)

EPIXSTAR CORPORATION, LIBERTY ONLINE
SERVICES INC., NATIONAL ONLINE SERVICES,
INC., B2B ADVANTAGE INC., a/k/a SBA
ONLINE, INC.,

-and-

WILLIAM DOUGLAS RHODES, individually and as
an officer and director of the corporate defendants,

Defendants.

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission (“Commission”), commenced this action by filing its
complaint on October 28, 2003 for a permanent injunction and other relief, including

restitution to consumers, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57(b), charging Defendants Epixtar Corporation, Liberty Online Services, Inc., National Online Services, B2B Advantage Online formerly known as SBA Online, Inc., and William D. Rhodes (“Defendants”) with engaging in unfair or deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. §45, in connection with the sale of Internet services, including but not limited to Internet access, website design and email services. The Commission and the Defendants hereby stipulate to the entry of this Stipulated Final Judgment and Order for Permanent Injunction (“Order”) to resolve all matters of dispute between them in this action, without trial or adjudication of any issue of fact or law.

THEREFORE, it is hereby, **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and all parties hereto;
2. Venue is proper as to all parties in the Southern District of New York;
3. The activities of the Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44;
4. The complaint states a claim upon which relief may be granted under Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57(b);
5. On October 6, 2005, Defendants Epixtar Corp., Liberty Online Services, Inc., National Online Services, Inc.; and B2B Advantage, Inc. (“Debtor Defendants”) each filed voluntary petitions for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the Bankruptcy Court for the Southern District of Florida (“Bankruptcy

Court”), Case Nos. 05-42040-BKC-AJC, 05-42042-BKC-AJC, 05-42043-BKC-AJC and 05-42049-BKC-AJC (“Bankruptcy Cases”). Except as otherwise provided in Paragraphs VI and VII of this Order, the Commission’s action against the Debtor Defendants, including the entry and enforcement of this Order, is not stayed by 11 U.S.C. § 362 (a)(1), (2), (3) or (6) because it is an exercise of the Commission’s police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exception to the automatic stay.

6. On December 21, 2005, the Bankruptcy Court entered an Order Settling Controversy Between Debtors and Laurus Master Fund, Ltd. Pursuant to Bankruptcy Rule 9019(A) (the “Bankruptcy Court Order”) in the Bankruptcy Cases, which granted the Debtor Defendants’ motion to approve a settlement agreement (the “Bankruptcy Court Settlement”) with, among others, their pre-petition lender Laurus Master Fund, Ltd. (“Laurus”). Pursuant to the Bankruptcy Court Order and the Bankruptcy Court Settlement, Laurus was deemed the beneficial owner of the assets, but none of the liabilities of Debtor Defendants Liberty Online Services, Inc. (“Liberty”), National Online Services, Inc. (“National”), B2B Advantage, Inc. (“B2B”) and Ameripages, Inc. (“Ameripages”), except as otherwise provided herein or in the Bankruptcy Court Order. Pursuant to the Bankruptcy Court Order, Laurus (including its successors and assigns) is a successor and assign of the Corporate Defendants under the Stipulated Preliminary Injunction entered in this action on November 21, 2003 (the “Stipulated Preliminary Injunction”) and is otherwise subject to and bound by this Order. Nothing in this Order, however, shall imply, or be deemed to imply, or shall constitute a finding of fact, conclusion of law, decree or determination that (x) this Order was entered against Laurus or Laurus has violated any law, rule, statute or regulation, (y) Laurus has ever been or is named a Defendant herein, or has committed any of the acts complained of herein, or (z) Laurus is

vicariously liable for or subject to successor or transferee liability under any statute or theory of law or equity, including the monetary judgment set forth herein, whether administrative, civil or criminal, for the acts or omissions of any of the Debtor Defendants; provided, however, that Laurus or its designee, as a successor and assign of the Debtor Defendants, shall be obligated to comply with and perform in accordance with those provisions of this Order binding on “successors and assigns” of the Debtor Defendants, including, without limitation, permitting consumers to cancel ISP Service and providing satisfactory refunds in accordance with this Order as more particularly specified in the Consumer Redress provisions set forth herein.

7. Defendants have entered into this Order freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them;

8. Defendants waive all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996);

9. Defendants waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Order, and further waive any claim Defendants may have against the Commission, or its employees and agents;

10. Entry of this Order is in the public interest; and

11. This Order does not constitute and shall not be interpreted to constitute an admission by Defendants, or a finding that Defendants have engaged in violations of any law or regulations, including the Federal Trade Commission Act.

DEFINITIONS

1. **“Defendants”** means Epixtar Corporation, Liberty Online Services, Inc., National Online Services, Inc., B2B Advantage, Inc., f/k/a SBA Online, Inc., and Ameripages, Inc., a/k/a Amerilinc, Inc., by whatever names each might be known (hereafter “the Corporate

Defendants”), William Douglas Rhodes (hereafter “the Individual Defendant”) individually and as an officer and director of the Corporate Defendants.

Provided, however, that the term “Defendants” shall not include Savoncalling.com, LLC., a bankrupt subsidiary of Defendant Epixtar Corporation maintaining a leasehold at 11900 Biscayne Boulevard, Miami, the address of the Corporate Defendants named in this action.

2. **“Document”** is equal in scope and synonymous in meaning to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and any other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.

3. **“Free-to-Pay Conversion”** shall be defined as set forth in Section 310.2(o) of the Commission’s Telemarketing Sales Rule (“TSR”), 16 C.F.R. part 310, as amended as of March 31, 2003, and as may be amended subsequently.

4. **“Negative-Option Feature”** shall be defined as set forth in Section 310.2(t) of the TSR, as amended as of March 31, 2003, and as may be amended subsequently.

5. **“ISP Services”** means any product or service provided by Defendants, or their successors and assigns, that assists persons to access, use, browse, advertise on, communicate through, or do business on the Internet, including, but not limited to: design, hosting and maintenance of web pages and web sites and providing Internet access or e-mail accounts.

6. **“Line Subscriber”** means an individual who or entity which has arranged with a local exchange carrier (“LEC”) to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis, or a

person who confirms that he or she is authorized to incur charges on behalf of the Line subscriber.

ORDER

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering, or sale of any ISP Services by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Making, directly or through an intermediary, expressly or by implication, orally or in writing, any misrepresentation of material fact, including, but not limited to, falsely representing that a consumer will receive a free trial membership without risk or obligation;

B. Failing to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call:

1. The identity of the seller;
2. That the purpose of the call is to sell goods or services;
3. The nature of the goods or services offered; and
4. Before a consumer pays for the goods and services offered, all material terms and conditions of the transaction.

C. If Defendants, or their successors or assigns, offer ISP Services through the use of a Free-to-Pay Conversion or Negative Option Feature, failing to disclose truthfully, in a clear and conspicuous manner, before a consumer pays for the goods or services offered:

1. That a consumer who fails to contact Defendants, or their successors and assigns, within a specified period of time and cancel is automatically enrolled as one of their customers;
2. That the consumer's telephone account will be charged unless the consumer cancels during the specified period of time; and
3. The prescribed manner in which the consumer must cancel, and other specific steps the consumer must take to avoid the charges; the exact duration of the trial period and the time period in which the charges will be submitted for payment.

II. PROHIBITED BILLING PRACTICES

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any ISP Services by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from billing or receiving money, or assisting others in billing or receiving money from a Line Subscriber for ISP Services, without first obtaining the Line Subscriber's express informed consent which shall include, but not be limited to:

- A. Obtaining from or confirming with the Line Subscriber the telephone number or account number to be charged;
- B. Obtaining from the Line Subscriber his or her express agreement to be charged for the ISP Services and to be charged using the aforesaid telephone number or account number;
- C. Making and maintaining an audio or digital recording of the entire telemarketing transaction with the Line Subscriber, whether or not the sales transaction and its verification are conducted

by the same telemarketer or seller; *provided, however*, that where bound by state law to obtain consent to record the transaction, Defendants, or their successors and assigns, may, before beginning to record, only: 1) ask for permission to tape record the transaction; and 2) state that this is an offer from a seller. Defendants, or their successors and assigns, must reiterate any such statement when they begin recording;

D. With respect to ISP Services offered through the use of Free-to-Pay Conversion or Negative Option features, sending at least fourteen days prior to the initial billing, a Billing Notice, labeled appropriately on the outside of the envelope in clear and conspicuous terms, which billing notice advises the consumer in clear and conspicuous terms, of the date that billing is to commence, the name of the person who authorized the billing, the amount of the billing, and a toll-free number to call to cancel the service to avoid billing.

III. REQUIRED PRACTICES

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, or sale of any ISP Services by telephone, on or through the Internet, the World Wide Web, any Web site, or otherwise in commerce, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, shall:

A. Engage telemarketers who, and utilize telemarketing materials, including but not limited to, sales scripts, customer service scripts, and pamphlets, that clearly and conspicuously inform the consumer that the nature of the call is to sell goods or services; and when offering ISP Services through the use of a Negative Option Feature or Free-to-Pay Conversion: 1) that he or she will be charged for the service unless he or she calls a specified toll-free number to cancel before the trial period ends; and 2) the time period when such trial begins and ends;

- B. Make and maintain for a period of three (3) years, an audio recording of the entire telemarketing transaction, including any introductory language, and obtain the consumer's express agreement to be charged for the service using the specified phone number, or any other form of payment;
- C. Review 10% of the audio recordings made on a weekly basis of the entire telemarketing transactions, to ensure that the consumer's express informed consent for the ISP Service was obtained, and that, if applicable, the consumer was informed that he or she would be billed at the end of the free trial period, unless he or she called to cancel the service before the trial period's conclusion; and further, reject any sale where the verification does not comport with the requirements of Paragraph IV below;
- D. Permit any consumer who wishes to cancel to do so; and
- E. Provide a satisfactory refund to any consumer who reasonably claims to have been billed by a Defendant: 1) without authorizing the service, or 2) when offering ISP Services through the use of a Negative Option Feature or a Free-to-Pay Conversion, without having been informed that he or she would be billed unless he or she contacted the company to cancel before the end of the free trial period, to the extent that such consumer has not previously received the requested refund or credit from the LEC or billing aggregator.

Provided, however, that Defendants, or their successors and assigns, shall comply with the Consumer Redress requirements as set forth in Paragraph VI below when making refunds.

IV. AUDIO RECORDING OF TELEMARKETING TRANSACTIONS

IT IS FURTHER ORDERED that, in connection with the audio recording of entire telemarketing transactions required pursuant to this Order, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with

them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from accepting or processing any such transaction unless the audio recording meets the following criteria:

A. The audio recording must clearly and accurately reflect the consumer's agreement to record the telephone call, as provided for in Paragraph II.C. above; and

B. The audio recording must include, in volume, tempo, and cadence sufficient for an ordinary consumer to hear and comprehend, clear and conspicuous disclosures of all material terms of the offer and the consumer's express agreement to those terms. The material terms disclosed in the recorded conversation shall be consistent with any material terms previously disclosed to consumers. For purposes of this Paragraph, material terms include, but are not limited to:

1. The information contained in Paragraph I.B. of this Order;
2. Which, if any, of the products or services are free and, if applicable, the length of the free offer;
3. The amount of any set-up, monthly, or recurring fee;
4. The manner in which such fee will be billed; *i.e.*, by credit card, directly, on a consumer's telephone bill, or otherwise;
5. If applicable, the means by which a consumer may cancel the services without incurring any cost or obligation;
6. If applicable, the date by which, or time period within which, a consumer must cancel the services to avoid being charged a fee; and
7. Defendants', or their successors' and assigns', toll-free telephone number.

V. CUSTOMER LISTS

IT IS FURTHER ORDERED that Defendants, their successors, assigns, officers,

agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, Social Security Number, or other identifying information of any person who was called or charged by Defendants, prior to entry of this Order, in connection with the purchase of the ISP Services. *Provided, however,* that Defendants, or their successors and assigns, may disclose such identifying information to a law enforcement agency or as required by any law, regulation, or court order and *provided, further,* that nothing in this Paragraph prohibits Defendants, or their successors and assigns, from listing the name, address and telephone number of businesses as part of their Internet business directories, that exist now or in the future.

VI. MONETARY JUDGMENT AND CONSUMER REDRESS

IT IS FURTHER ORDERED, that subject to the conditions of this Paragraph VI, including paragraph VI.J., and the provisions of Paragraph VII of this Order, judgment is hereby entered in favor of the Commission and against the Corporate Defendants, jointly and severally, for equitable monetary relief in the amount of THIRTY-THREE MILLION DOLLARS (\$33,000,000), the approximate amount of consumer injury alleged in Plaintiff's complaint, less any redress amounts previously paid by the Corporate Defendants after October, 2005. Subject further to the conditions of this Paragraph VI and the provisions of Paragraph VII of this Order, the Commission and Defendants acknowledge and agree that no portion of this judgment shall be deemed a fine, penalty, punitive assessment or forfeiture; provided, however, that the judgment shall be deemed satisfied by the payment in full of the consumer refunds and the escrow account in accordance with the terms of this Order, including the conditions set forth in Paragraph VI.J.;

provided, further, however, that to the extent the judgment shall become due and payable in accordance with, and subject to, the provisions of Paragraph VII of this Order, the Commission shall be entitled to an allowed general unsecured claim in the Bankruptcy Cases in the amount of THIRTY-THREE MILLION DOLLARS (\$33,000,000), pursuant to 11 U.S.C. § 502 (the “Bankruptcy Claim”), less any redress amounts previously paid by the Corporate Defendants after October, 2005, and the Bankruptcy Claim shall be classified and entitled to receive the treatment afforded to holders of allowed unsecured claims under the terms and conditions of any plan or plans of reorganization or liquidation confirmed by the Bankruptcy Court in the Bankruptcy Cases.

A. Corporate Defendants shall provide for consumer redress as follows:

1. For a period of twenty-four (24) months following entry of this Order, Corporate Defendants hereby agree to provide a satisfactory refund to any consumer where such consumer reasonably claims to have been billed: a) without authorizing the service, or b) without having been informed that they would be billed unless they contacted the company to cancel, to the extent that such consumer has not previously received the requested refund or credit from their local exchange carrier or a billing aggregator;
2. In instances where there is any difference whatsoever between the amount of refund initially sought by the consumer and the amount of refund offered by Corporate Defendants, Corporate Defendants shall immediately advise the consumer of the option of referring the consumer’s request for a refund to the Referee and, under the following circumstances below, Corporate Defendants shall submit the consumer’s request for a refund to the Referee as set forth in Paragraph IX below, for her reasonable resolution of the final appropriate refund due to the consumer, if any,

which shall be binding:

- a. The conversation is discontinued without the consumer accepting Corporate Defendants' offer of referral to the Referee or the consumer otherwise refuses Corporate Defendants' refund offer; or
- b. The consumer rejects Corporate Defendants' refund offer and requests that the refund request be referred to the Referee for a resolution.

Provided however, that Corporate Defendants' need not refer any matter to the Referee where the consumer accepts Corporate Defendants' refund offer after having been advised by Corporate Defendants of the option of referring the consumer's refund request to the Referee and having declined said option.

B. In partial satisfaction of Corporate Defendants' obligations under this Paragraph VI, Corporate Defendants have deposited the sum of One Hundred and Seventy-Five Thousand Dollars (\$175,000) into an interest bearing escrow account, with the Lustigman Firm, P.C. serving as escrow agent.

C. The undersigned parties acknowledge that: (a) the Lustigman Firm, P.C. acting as escrow agent, is merely a stakeholder; (b) upon payment of the escrow funds pursuant to the terms of this Order, the escrow agent shall be fully released from all liability and obligations with respect to the escrow funds; c) by signing of this attached Order, the escrow agent shall have no liabilities or obligations except to pay any taxes on interest income accruing to the escrow funds and, as otherwise provided herein. If, in its sole discretion, the Lustigman Firm, P.C. elects to discontinue its duties as escrow agent hereunder, it may also pay the escrow funds into the Court pursuant to relevant statute or to a successor escrow agent agreed to by the parties.

D. The escrow account established pursuant to Paragraph VI.B. above, shall be maintained for a period of twenty-four (24) months following entry of the Order. Corporate Defendants shall

issue refunds from the escrow account to any consumer to whom Defendants previously sent a reminder notice pursuant to the Stipulated PI, and shall be entitled to pay any reasonable and necessary fees of the Referee from the escrow account only to the extent that any such fees remain unpaid after application of the funds still held by the Referee as former Monitor pursuant to the Stipulated PI , as set forth in Paragraph IX.E below.

E. The escrow account established pursuant to Paragraph VI.B. above, shall be terminated in accordance with the following conditions only:

1. Corporate Defendants shall, within fifteen (15) days of the termination of Corporate Defendants' obligations to issue refunds or credits to the consumers who were notified pursuant to the Stipulated PI, notify the Commission in writing that their obligations have terminated and confirm under penalty of perjury that there are no pending refunds or credits to be issued to these specific consumers;
2. Commission counsel, on receipt of this initial notice from Corporate Defendants, shall make a determination as to whether the Commission possesses any complaints from such consumers that Corporate Defendants have not responded to and provide copies of the same to Corporate Defendants within ten (10) days for their review and determination;
3. On receipt of a subsequent notice from Corporate Defendants that they have responded to the consumer complaints referenced in Paragraph VI.E.2 above, if any, Commission counsel will notify the escrow agent that the escrow account may be terminated and all funds remaining in the escrow account, including accrued interest less any taxes due and owing on the interest income, shall be released and transferred

to the Commission to be used for equitable relief, including but not limited to, consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the Treasury as disgorgement. Defendants shall have no right to challenge the Commission's choice of remedies under this Section; and

4. Until Commission counsel so notifies the escrow agent, the escrow funds shall be maintained by the escrow agent.

F. The Debtor Defendants shall file a motion in their Bankruptcy Cases and obtain the Bankruptcy Court's approval to enter into this Order and take any and all actions necessary and appropriate to implement and effectuate the terms and conditions of this Order, including the requirements of paying the consumer refunds, funding the escrow account, and retaining the Referee. Any plan of reorganization or liquidation proposed by the Debtor Defendants or otherwise confirmed in the Bankruptcy Cases, pursuant to 11 U.S.C. § 1129, shall be consistent with the terms of this Order and shall not modify or otherwise supercede this Order, including the District Court's exclusive jurisdiction to interpret and enforce this Order, and the FTC shall vote in favor of such plan. If the Debtor Defendants propose a plan of liquidation, such plan of liquidation shall provide that those reserves held by billing houses and/or LECs shall continue to be held by those entities in the ordinary course of business for the purpose of providing refunds

in accordance with this Order, and any additional reserves that may be required shall be derived from the operations of Liberty Online Services, Inc., National Online Services, Inc. B2B Advantage, Inc., and Ameripages, Inc. If the Bankruptcy Cases are converted to a Chapter 7 liquidation, those reserves held by billing houses and/or LECs shall continue to be held by those entities in the ordinary course of business for the purpose of providing refunds in accordance with this Order.

IT IS FURTHER ORDERED THAT:

G. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to the Commission their respective taxpayer identifying numbers (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

H. For purposes only of any subsequent proceedings to enforce payments required by this Order, including, but not limited to, a non-dischargeability complaint filed in a bankruptcy case, Defendants agree that the facts as alleged in the Plaintiff's complaint filed in this action shall be taken as true, without further proof.

I. The obligations of Paragraph VI. shall be binding on the Corporate Defendants and their successors or assigns.

J. From and after the (i) Effective Date of any plan of reorganization or liquidation, or (ii) the date on which an order of the Bankruptcy Court becomes final, either (i or ii) of which provides for (x) the transfer of shares of common stock owned by Epixtar Corp. in NOL Group, Inc. ("NOL") to Laurus or its designee, (y) the transfer of shares of common stock owned by NOL in

Ameripages, National, Liberty and B2B to Laurus or its designee, or (z) the transfer of assets of Ameripages, National, Liberty and B2B to Laurus or its designee, and provided that Epixtar Corp. is no longer engaged in the business of Liberty, National, B2B and Ameripages, Epixtar Corp., Voxx Corp., Epixtar Marketing Corp., Epixtar Communications Corp., Epixtar Philippines IT-Enabled Services Corp. and Epixtar International Contact Center Group, Inc., including their successors and assigns (excluding Laurus or its designee), shall have no liability under Paragraph VI of this Order (except for any liability which may be imposed pursuant to the provisions of Paragraph VII of this Order) or for any default or violation of this Order by Laurus or its designee; *provided, however*, that notwithstanding any transfer described in this Paragraph VI.J, Epixtar shall remain bound by Paragraphs VI.C, VI.F and VI.G of this Order; *provided, further, however*, that Epixtar shall have no right to challenge the Commission's choice of remedies under Paragraph VI.D.3 of this Order and the Defendants shall be obligated to notify the Commission in writing of the effective date of any transfer described in this Paragraph VI.J.

VII. TERMINATION OF SUSPENSION AND RIGHT TO REOPEN

IT IS FURTHER ORDERED that, by agreeing to this Order, Defendants reaffirm and attest to the truthfulness, accuracy and completeness of the financial statements that were prepared by Defendants and provided to the Commission on November 30, 2003, reaffirmed on October 22, 2004 and clarified on June 24, 2005 (Defendant Rhodes) and December 18, 2003 and reaffirmed on January 6, 2005 (Defendant Epixtar) (designated the "Financial Statements"). The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' financial conditions as represented in their Financial Statements referenced above, which contain material information relied upon by the

Commission in negotiating and agreeing to the terms of this Order.

A. Notwithstanding anything contained herein to the contrary, if the effective date of any plan of reorganization or liquidation confirmed in the Bankruptcy Cases, pursuant to 11 U.S.C. § 1129, has not yet occurred and, upon notice and motion by the Commission, this Court finds that Defendant Epixtar failed to disclose any material asset, materially understated the value of any asset, or made any other such material misrepresentation in or omission from its Financial Statements, the suspension of the monetary judgment set forth in Paragraph VI will be terminated and the Commission, on account of the Bankruptcy Claim, shall receive the treatment afforded holders of allowed general unsecured claims under the terms and conditions of any plan or plans of reorganization or liquidation confirmed by the Bankruptcy Court in the Bankruptcy Cases but not any distribution by a Chapter 7 Trustee appointed in the Bankruptcy Cases, less any redress amounts previously paid by the Corporate Defendants after October, 2005.

B. If, upon notice and motion by the Commission, this Court finds that Defendant Rhodes failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from his Financial Statement, the Court shall enter a judgment in favor of the Commission against Defendant Rhodes for equitable monetary relief in the amount of THIRTY-THREE MILLION DOLLARS (\$33,000,000), the approximate amount of consumer injury alleged in Plaintiff's complaint, and the entire amount, less any redress amounts previously paid by the Corporate Defendants after October, 2005, shall become immediately due and payable.

Provided, however, that in all other respects this Order shall remain in full force and effect unless otherwise ordered by the Court; and, *provided further,* that proceedings instituted

pursuant to this Paragraph would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings the Commission may initiate to enforce this Order; and

Provided further, that nothing in this Paragraph VII shall prohibit Defendants from restating any earnings, as may be required by changes in accounting rules, required by amendments to the securities laws or at the request of any securities regulator; and that the sale or transfer of any asset that was booked in accordance with GAAP that subsequently results in a profit, shall not be deemed to be a material misrepresentation or understatement of value.

VIII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that in connection with any business in which any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where the business is engaged in the sale of ISP Services to consumers, Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs I, II and III of this Order. Such steps shall include, at a minimum, the following:

1. listening to a representative sample of the oral representations made by persons engaged in sales or other customer service functions;
2. establishing a procedure for receiving and responding to consumer complaints; and
3. ascertaining the number and nature of consumer complaints regarding transactions in

which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and

C. Failing to take corrective action with respect to any sales person whom any Defendant or representative determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

IX. APPOINTMENT OF REFEREE

IT IS FURTHER ORDERED that the position of Monitor created pursuant to the Stipulated PI, shall hereafter be known as “Referee” and, Angela Tese-Milner, the former Monitor in this action, is hereby appointed to serve as Referee until the conclusion of Corporate Defendants’ obligations to provide refunds and credits to requesting consumers pursuant to Paragraph VI.A. above. The Referee is empowered to resolve disputes regarding refunds and credits offered to any consumer by Corporate Defendants, which resolution, if any shall be binding on Corporate Defendants. The Referee’s duties are as follows:

A. To resolve disputes between consumers and Corporate Defendants regarding refunds and credits using the following procedure:

1. On receipt of a notice that there is a difference between the amount of the refund or credit offered by Corporate Defendants and the amount requested by a consumer, the Referee shall contact Defendants’ General Counsel and The Lustigman Firm, P.C., or counsel for their successors and assigns and request a copy of the Corporate Defendants’ records of customer service contacts with the complaining consumer and a copy of the recording of the telemarketing transaction. The Referee can make such

- request via email, or via fax as per contact information given to the Referee by Corporate Defendants.
2. Corporate Defendants shall provide the requested information and any other statement Corporate Defendants wish to make regarding their dealings with the customer, within seven (7) days (including weekends and holidays) of receipt of the Referee's request.
 3. The Referee shall render a reasonable resolution of the final appropriate refund to the consumer, if any, within five (5) days of receiving Corporate Defendants' response; and
 4. In a situation where Corporate Defendants themselves have forwarded notice of a consumer complaint to the Referee, Corporate Defendants shall simultaneously provide a copy of the record of their customer service contacts with the consumer and the tape recording of the sale. The Referee shall then have fourteen (14) days within which to contact the consumer for further details regarding their complaint. If the consumer responds to that request in writing, then the Referee shall have an additional seven (7) days, from receipt of the consumer's response, to make a determination about the appropriate amount of refund to be given.
- B. The consumer redress obligations of Paragraph IX.A. shall be binding on the Corporate Defendants and their successors or assigns.
- C. To issue periodic reports, observations, and recommendations to the FTC with a copy to the Corporate Defendants and, upon reasonable notice to the parties, to seek guidance and instruction from this Court, if the Referee deems it necessary.

IT IS FURTHER ORDERED THAT:

D. The Referee shall have the power to enter into such agreements in connection with the performance of her duties herein, including, but not limited to the retention and employment of personnel including, without limitation, members and employees of the Referee's firm.

E. The Referee and all personnel hired by the Referee as herein authorized, including counsel to the Referee and accountants, shall be entitled to reasonable compensation for the performance of duties pursuant to this Order and for reasonable actual out-of-pocket expenses incurred by them, to be paid solely by the Corporate Defendants and not by the Commission. Such payments to the Referee may be made from the escrow account established pursuant to Section VI.C above, only after such payments to the Referee have been made from and exhausted any remaining funds still held by the Referee as former Monitor pursuant to the Stipulated PI. If such funds held by the Referee as former Monitor pursuant to the Stipulated PI are not so exhausted, then the Referee shall transfer such remaining funds to the Commission to be used in accordance with the requirements set forth in paragraph VI.F.3 of this Order.

F. The Referee and any party may, at any time, upon proper notice to the parties apply to this Court for further instructions or for additional authority as may be needed, or to withdraw from the position of Referee for any reason.

G. No bond shall be required in connection with the appointment of the Referee. The Referee, those assisting her and/or her professionals shall not be personally liable for any loss or damage incurred by reason of any act performed or omitted by any Defendant. The Referee shall be held harmless for any act or omission by any Defendant that occurs during the Referee's performance of her duties and responsibilities thereunder.

Provided, however, the Referee is appointed by the Court to serve only as a Referee, not as a receiver, and does not assume any rights, duties, functions or responsibilities with regard to the use, operation, management, repair, replacement, protection, or improvement of the Corporate Defendants' real or personal property.

Provided, further, that nothing in this Paragraph shall be interpreted to waive any Defendant's valid claim of attorney-client privilege, subject to the Court's determination upon *in camera* inspection, upon the request of the Referee or Plaintiff.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
2. posing as consumers and suppliers to: Defendants, their employees, or any other entity managed or controlled in whole or in part by Defendants without the necessity of identification or prior notice;

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

C. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

D. The compliance monitoring obligations of Paragraph X shall be binding on the Defendants and their successors or assigns.

XI. COMPLIANCE REPORTING

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

A. For a period of five (5) years from the date of entry of this Order,

1. Defendant Rhodes shall notify the Commission of the following: (a) Any changes in Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change; (b) Any changes in Defendant's employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the

business; and (c) any changes in Defendant's name or use of any aliases or fictitious names; and

2. Corporate Defendants, their successors and assigns shall notify the Commission of any changes in corporate structure that may affect their compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least fifteen (15) days prior to such change, provided, however, that sufficient notice shall be afforded the Commission if any such change is disclosed in any plan of reorganization or liquidation and/or disclosure statement filed in any of the Bankruptcy Cases and served upon the Commission; *provided further* that, with respect to any proposed change in the corporation about which the Corporate Defendants learn less than fifteen (15) days prior to the date such action is to take place, Corporate Defendants shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, Defendant Rhodes and the Corporate Defendants, their successor and assigns each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to: (1) any changes required to be reported pursuant to subparagraph (A) above; (2) a copy of each acknowledgment of receipt of this Order obtained pursuant to Paragraph XIII.

C. For the purposes of this Order, Defendants shall, unless otherwise directed by the

Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

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D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendant Rhodes or any officer or director of the Corporate Defendants.

E. The compliance reporting requirements of Paragraph XII shall be binding on the Corporate Defendants and their successors or assigns.

XII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants, in connection with any business in which any Defendant is the majority owner or directly or indirectly manages or controls the business, and where the business is engaged in the sale of ISP Services to consumers, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced employment; and the date and reason for the person's termination, if

applicable;

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 received by Corporate Defendants (whether orally or in writing and 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, or other marketing materials.

F. The record keeping requirements of Paragraph XIII shall be binding on the Corporate Defendants and their successors or assigns.

XIII. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants and their successors and assigns shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendants, or their successors and assigns, shall deliver this Order to current personnel within thirty (30) days after the date of service of this Order, and to new personnel within thirty (30) days after the person assumes such position or responsibilities.

XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

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

statement acknowledging receipt of this Order.

XV. INDEPENDENCE OF OBLIGATIONS

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

XVI. COSTS AND ATTORNEY'S FEES

The parties, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof. Each party shall bear its own costs and attorney's fees.

XVII. DISSOLUTION OF PRELIMINARY INJUNCTION

Upon entry of this Order, the Stipulated Preliminary Injunction, dated November 21, 2003, is dissolved.

XVIII. SIGNATURES

The parties hereby consent to the terms and conditions of the Order as set forth above and consent to the entry thereof. This Order may be executed in multiple counterparts or on separate signature pages. Facsimile signatures shall be deemed acceptable.

XIX. RETENTION OF JURISDICTION

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

STIPULATED AND AGREED TO:

FOR THE FEDERAL TRADE COMMISSION:

BARBARA ANTHONY
Director, Northeast Region

CAROLE A. PAYNTER (CP 4091)
ROBIN E. EICHEN (RE 2964)
LEONARD GORDON (LG 7074)
Federal Trade Commission
Northeast Region
1 Bowling Green, Suite 318
New York, NY 10004
(212) 607-2813; 2803; 2815
(212) 607-2822 (facsimile)

FOR DEFENDANTS:

WILLIAM D. RHODES
Individually and as Officer of Defendants
National Online, Inc., Liberty Online Inc.,
B2B Advantage, Inc., and AmeriLinc.

IRV GREENMAN, CEO
on behalf of Epixtar Corp.

COUNSEL FOR THE DEFENDANTS:

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ANDREW LUSTIGMAN (AL 8209)
The Lustigman Firm, P.C.
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(212) 683-9180
(212) 683-9181 (facsimile)

SO ORDERED, this ___ day of _____, 2006, at _____.m.

U.S.D.J.