

1 UNITED STATES DISTRICT COURT  
 2 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

3 FEDERAL TRADE COMMISSION, )

4 Plaintiff )

5 v. )

6 BURNLOUNGE, INC., )  
 7 a corporation; )  
 8 JUAN ALEXANDER ARNOLD, )

9 an individual; )  
 10 JOHN TAYLOR, )  
 an individual; )

11 ROB DEBOER, )  
 an individual; and )

12 SCOTT ELLIOTT, )  
 an individual; )

Defendants. )

Case No. CV 07-3654 GW FMOx

**STIPULATED FINAL ORDER  
 FOR PERMANENT INJUNCTION  
 AND OTHER EQUITABLE RELIEF  
 AGAINST DEFENDANT SCOTT  
 ELLIOTT**

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 JS-2/JS-3 \_\_\_\_\_  
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13 Plaintiff Federal Trade Commission ("Commission" or "FTC") filed a  
 14 Complaint for a permanent injunction and other equitable relief pursuant to Section  
 15 13(b) of the Federal Trade Commission Act ("FTC Act"). The Complaint charged  
 16 Defendants with violations of Section 5(a) of the FTC Act, as amended, 15 U.S.C.  
 17 § 45(a).

18 Plaintiff FTC and Defendant Scott Elliott ("Defendant Elliott") have agreed  
 19 to entry of this Stipulated Final Order for Permanent Injunction and Other  
 20 Equitable Relief ("Order") by the Court to resolve all charges against Defendant  
 21 Elliott set forth in the Complaint and all matters in dispute between Plaintiff and  
 22 Defendant Elliott in this action. Plaintiff and Defendant Elliott having requested  
 23 the Court to enter this Order, the Court hereby finds and orders as follows:

24 **FINDINGS**

25 1. This is an action by the FTC instituted pursuant to Sections 5(a) and  
 26 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b). The Commission seeks both  
 27 permanent injunctive relief and consumer redress against Defendants for alleged  
 28 deceptive acts and practices in connection with the advertising, marketing and sale

1 of opportunities to operate on-line digital music stores.

2 2. This Court has jurisdiction of the subject matter of this case and over  
3 Defendant Elliott.

4 3. Venue in the Central District of California is proper.

5 4. The Complaint states claims upon which relief may be granted  
6 against Defendant Elliott under Sections 5 and 13(b) of the FTC Act, as amended,  
7 15 U.S.C. §§ 45 and 53(b).

8 5. The activities of Defendant Elliott charged in the Complaint are in or  
9 affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

10 6. Defendant Elliott has entered into this Stipulated Final Judgment and  
11 Permanent Injunction ("Order") freely and without coercion. Defendant Elliott  
12 further acknowledges that he has read or otherwise been fully advised of the  
13 provisions of this Order and is prepared to abide by it.

14 7. Defendant Elliott denies liability for the charges in the Complaint, and  
15 there has been no final adjudication of whether the charges in the Complaint are  
16 true.

17 8. Defendant Elliott has waived all rights to seek judicial review or  
18 otherwise challenge or contest the validity of this Order. Defendant Elliott has also  
19 waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as  
20 amended by PL 104-121, 110 Stat. 847, 863-64 (1996).

21 9. Defendant Elliott waives all rights to seek appellate review or  
22 otherwise challenge or contest the validity of this Order.

23 10. The parties shall each bear their own costs and attorney's fees  
24 incurred in this action.

25 11. This action and the relief awarded herein are in addition to, and not in  
26 lieu of, other remedies as may be provided by law, including both civil and  
27 criminal remedies.

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

1  
2 **DEFINITIONS**

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

4 1. "Business Venture" means any written or oral business arrangement,  
5 however denominated, whether or not covered by 16 C.F.R. Parts 436 or 437, that  
6 consists of the payment of any consideration for (i) the right or means to offer, sell,  
7 or distribute goods or services (whether or not identified by a trademark, service  
8 mark, trade name, advertising or other commercial symbol); and (ii) assistance to  
9 any person in connection with or incident to the establishment, maintenance, or  
10 operation of a new business, or the entry by an existing business into a new line or  
11 type of business.

12 2. "Consumer" means an actual or potential purchaser, customer,  
13 subscriber, or natural person.

14 3. "Defendant Elliott" means Defendant Scott Elliott.

15 4. The term "document" is synonymous in meaning and equal in scope to  
16 the usage of the term in Federal Rule of Civil Procedure 34(a), and includes  
17 writings, drawings, graphs, charts, photographs, audio and video recordings,  
18 electronically stored information, computer records, and other data compilations  
19 from which information can be obtained and translated, if necessary, through  
20 detection devices into reasonably usable form. A draft or non-identical copy is a  
21 separate document within the meaning of the term.

22 5. "Material fact" means any fact likely to affect a person's choice of, or  
23 conduct regarding, goods or services.

24 6. "Multi-Level Marketing Program" means any marketing program in  
25 which participants pay money to the program promoter in return for which the  
26 participants obtain the right to: (1) recruit additional participants, or have  
27 additional participants placed by the promoter or any other person into the program  
28 participant's downline, tree, cooperative, income center, or other similar program

1 grouping; (2) sell goods or services; and (3) receive payment or other  
2 compensation, in whole or in part, based upon the sales of those in the participants  
3 downline, tree, cooperative, income center or similar program grouping.

4 7. "Participating in any prohibited marketing scheme" includes, but is  
5 not limited to, promoting, marketing, advertising, offering for sale, or selling, or  
6 assisting others in the offering for sale or selling the right to participate in, the  
7 prohibited marketing scheme, as well as acting or serving as an officer, director,  
8 employee, salesperson, agent, shareholder, advisor, consultant, independent  
9 contractor, or distributor, or acting as a speaker or spokesperson on behalf of, any  
10 prohibited marketing scheme.

11 8. "Prohibited Marketing Scheme" means a pyramid sales scheme, Ponzi  
12 scheme, chain marketing scheme, or other marketing plan or program in which  
13 participants pay money or valuable consideration in return for which they obtain  
14 the right to receive rewards for recruiting other participants into the program, and  
15 those rewards are unrelated to the sale of products or services to persons who are  
16 not participants in the marketing plan or program.

17 **ORDER**

18 **I. Prohibition Against Participating in Any Prohibited Marketing Scheme**

19 IT IS THEREFORE ORDERED that Defendant Elliott and his agents,  
20 servants, employees, and attorneys, and those persons in active concert or  
21 participation with him who receive actual notice of this Order by personal service  
22 or otherwise, whether acting directly or through any entity, corporation, subsidiary,  
23 division, or other device are permanently restrained and enjoined from engaging,  
24 participating or assisting in any manner or capacity whatsoever, in any Prohibited  
25 Marketing Scheme.

26 **II. Prohibited Representations**

27 IT IS FURTHER ORDERED that, in connection with the advertising,  
28 promotion, offering for sale, or sale, or assisting others in the advertising,

1 promotion, offering for sale, or sale of any Multi-level Marketing Program or  
2 Business Venture, Defendant Elliott and his agents, servants, employees, and  
3 attorneys, and those persons in active concert or participation with him who  
4 receive actual notice of this Order by personal service or otherwise, whether acting  
5 directly or through any entity, corporation, subsidiary, division, or other device, are  
6 hereby permanently restrained and enjoined from making, expressly or by  
7 implication, orally or in writing, any false or misleading statement or  
8 misrepresentation of material fact including, but not limited to, the following:

9       A. Misrepresentations about the amount of sales, income, or profits that a  
10 participant in such Multi-level Marketing Program or Business Venture can  
11 reasonably expect to achieve;

12       B. Misrepresentations about the amount of sales, income, or profits that a  
13 participant or participants in such Multi-level Marketing Program or Business  
14 Venture have actually achieved;

15       C. Misrepresentations about the profitability of participating in such  
16 Multi-level Marketing Program or Business Venture

17       D. Misrepresentations that a person who participates in such Multi-level  
18 Marketing Program or Business Venture can reasonably expect to recoup his or her  
19 investment;

20       E. Misrepresentations of any reward offered to or earned by participants  
21 in such Multi-level Marketing Program or Business Venture; and

22       F. Misrepresentations of the legality of such Multi-level Marketing  
23 Program or Business Venture.

24                   **III. Prohibition Against Material Omissions**

25       IT IS FURTHER ORDERED that, in connection with the advertising,  
26 promotion, offering for sale, or sale, or assisting others in the advertising,  
27 promotion, offering for sale, or sale of any Multi-level Marketing Program or  
28 Business Venture, Defendant Elliott and his agents, servants, employees, and

1 attorneys, and those persons in active concert or participation with him who  
2 receive actual notice of this Order by personal service or otherwise, whether acting  
3 directly or through any entity, corporation, subsidiary, division, or other device, are  
4 hereby permanently restrained and enjoined from failing to disclose, clearly and  
5 conspicuously, to any participant or prospective participant in any Multi-level  
6 Marketing Program or Business Venture to whom any earnings, profits or sales  
7 volume claims have been made:

8 A. The number and percentage of participants in the Multi-level  
9 Marketing Program or Business Venture who have earned, profited or sold at least  
10 the amount represented; and

11 B. The number and percentage of participants in the Multi-level  
12 Marketing Program or Business Venture who have made a profit through their  
13 participation in the Multi-level Marketing Program or Business Venture.

14 **IV. Equitable Monetary Relief**

15 IT IS FURTHER ORDERED that:

16 A. Judgment is hereby entered in favor of the Commission and against  
17 Defendant Elliott in the amount of One hundred and seventeen thousand seven  
18 hundred ten and 69/100 dollars (\$117,710.69), for payment of equitable monetary  
19 relief.

20 B. Except as provided in Paragraph V of this Order, the judgment shall  
21 be suspended if the following conditions are satisfied:

- 22 1. Defendant Elliott shall within ten (10) days of entry of this  
23 Order pay to the Federal Trade Commission the amount of  
24 Twenty thousand dollars (\$20,000) in equitable monetary relief.  
25 No portion of any payments under this Order shall be deemed a  
26 payment of any fine, penalty, or punitive assessment.
- 27 2. Defendant Elliott shall pay all amounts due under this  
28 Order in cash by electronic funds transfer to the Commission,

1 or to such agent as the Commission may direct, pursuant to  
2 instructions provided by the Commission through its attorneys  
3 to be used for equitable relief.

4 C. Any and all funds paid pursuant to this Order, including this  
5 Paragraph IV, shall be deposited into a fund administered by the Commission or its  
6 agent to be used for equitable relief, including, but not limited to, consumer redress  
7 and any attendant expenses for the administration of any redress fund. Defendant  
8 Elliott will cooperate fully to assist the Commission in identifying consumers who  
9 may be entitled to redress pursuant to this Order. In the event that redress to  
10 purchasers is wholly or partially impracticable, or any funds remain after redress is  
11 completed, the Commission may at its sole discretion apply any remaining funds to  
12 such other equitable relief (including consumer information remedies) as it  
13 determines to be reasonably related to the practices alleged in the Complaint. Any  
14 funds not used for such equitable relief shall be deposited in the United States  
15 Treasury as disgorgement. Defendant Elliott shall have no right to contest the  
16 manner of distribution chosen by the Commission. The Commission in its sole  
17 discretion may use a designated agent to administer consumer redress.

18 **V. Right to Reopen As to Monetary Judgment**

19 IT IS FURTHER ORDERED that:

20 A. The Commission's agreement to this Order is expressly premised upon  
21 the truthfulness, accuracy and completeness of the "Financial Statement of  
22 Individual Defendant," dated July 12, 2007, that Defendant Elliott has previously  
23 submitted to the Commission. Said financial statements and supporting documents  
24 contain material information upon which the FTC has relied in negotiating and  
25 agreeing to the terms of this Order.

26 B. If, upon motion by the Commission to the Court, the Court finds that  
27 Defendant Elliott failed to disclose any material asset, or materially misrepresented  
28 the value of any asset, or made any other material misrepresentation in or omission





1 telephone number of each person employed in any capacity by such business,  
2 including as an independent contractor; that person's job title or position; the date  
3 upon which the person commenced work; and the date and reason for the person's  
4 termination, if applicable;

5 C. Customer files containing the names, addresses, phone numbers,  
6 dollar amounts paid, quantity of items or services purchased, and description of  
7 items or services purchased, to the extent such information is obtained in the  
8 ordinary course of business;

9 D. Complaints and refund requests (whether received directly, indirectly  
10 or through any third party) and any responses to those complaints or requests;

11 E. Copies of all sales scripts, training materials, advertisements, or other  
12 marketing materials; and

13 F. All records and documents necessary to demonstrate full compliance  
14 with each provision of this Order, including but not limited to, copies of  
15 acknowledgments of receipt of this Order, required by Paragraph X, and all reports  
16 submitted to the FTC pursuant to Paragraph IX.

17 **VIII. Compliance Monitoring**

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

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

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

28 1. obtaining discovery from any person, without further leave of

1 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,  
2 33, 34, 36, and 45;

- 3 2. posing as consumers and suppliers to Defendant Elliott, his  
4 employees, or any other entity managed or controlled in whole  
5 or in part by Defendant Elliott, without the necessity of  
6 identification or prior notice; and

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

11 *Provided, however,* that nothing in this Order shall limit the Commission's  
12 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,  
13 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things,  
14 testimony, or information relevant to unfair or deceptive acts or practices in or  
15 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

16 **IX. Compliance Reporting by Defendant**

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

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

- 20 1. Defendant Elliott shall notify the Commission of the  
21 following:

- 22 a. Any changes in residence, mailing addresses, and  
23 telephone numbers of Defendant Elliott, within ten (10)  
24 days of the date of such change;
- 25 b. Any changes in employment status (including  
26 self-employment) of Defendant Elliott, and any change in  
27 the ownership of Defendant Elliott in any business entity,  
28 within ten (10) days of the date of such change. Such

1 notice shall include the name and address of each  
2 business that Defendant Elliott is affiliated with,  
3 employed by, creates or forms, or performs services for;  
4 a statement of the nature of the business; and a statement  
5 of Defendant Elliott's duties and responsibilities in  
6 connection with the business or employment; and

7 c. Any changes in Defendant Elliott's name or use of any  
8 aliases or fictitious names; and

9 2. Defendant Elliott shall notify the Commission of any  
10 changes in corporate structure of any business entity that he  
11 directly or indirectly controls, or has an ownership interest in,  
12 that may affect compliance obligations arising under this Order,  
13 including but not limited to a dissolution, assignment, sale,  
14 merger, or other action that would result in the emergence of a  
15 successor entity; the creation or dissolution of a subsidiary,  
16 parent, or affiliate that engages in any acts or practices subject  
17 to this Order; the filing of a bankruptcy petition; or a change in  
18 the corporate name or address, at least thirty (30) days prior to  
19 such change, *provided* that, with respect to any proposed  
20 change in the corporation about which Defendant Elliott learns  
21 less than thirty (30) days prior to the date such action is to take  
22 place, Defendant Elliott shall notify the Commission as soon as  
23 is practicable after obtaining such knowledge.

24 B. One hundred eighty (180) days after the date of entry of this Order,  
25 Defendant Elliott shall provide a written report to the FTC, sworn to under penalty  
26 of perjury, setting forth in detail the manner and form in which he has complied  
27 and is complying with this Order. This report shall include, but not be limited to:

28 1. The then-current residence address, mailing addresses, and

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telephone numbers of Defendant Elliott;

- 2. The then-current employment and business addresses and telephone numbers of Defendant Elliott, a description of the business activities of each such employer or business, and the title and responsibilities of Defendant Elliott, for each such employer or business;
- 3. A copy of each acknowledgment of receipt of this Order obtained by Defendant Elliott pursuant to Paragraph X of this Order; and
- 4. Any other changes required to be reported under Subparagraph A of this Paragraph.

C. For the purposes of this Order, Defendant Elliott shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Federal Trade Commission  
Associate Director for Enforcement  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001  
Re: *FTC v. BurnLounge, et al.* Civ. No. 07-3654-GW FMOx

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Elliott.

1 **X. Distribution of Order by Defendant**

2 IT IS FURTHER ORDERED that, for a period of five (5) years from the  
3 date of entry of this Order, Defendant Elliott shall deliver copies of the Order as  
4 directed below:

5 A. For any business that Defendant Elliott controls, directly or indirectly,  
6 or in which Defendant Elliott has a majority ownership interest, Defendant Elliott  
7 must deliver a copy of this Order to all principals, officers, directors, and managers  
8 of that business. Defendant Elliott must also deliver copies of this Order to all  
9 employees, agents, and representatives of that business who engage in conduct  
10 related to the subject matter of the Order. For current personnel, delivery shall be  
11 within five (5) days of service of this Order upon Defendant. For new personnel,  
12 delivery shall occur prior to them assuming their responsibilities.

13 B. For any business where Defendant Elliott is not a controlling person  
14 of a business but otherwise engages in conduct related to the subject matter of this  
15 Order, Defendant Elliott must deliver a copy of this Order to all principals and  
16 managers of such business before engaging in such conduct.

17 C. Defendant Elliott must secure a signed and dated statement  
18 acknowledging receipt of the Order, within thirty (30) days of delivery, from all  
19 persons receiving a copy of the Order pursuant to this Paragraph.

20 **XI. Cooperation with FTC Counsel**

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

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

3 **XII. Independence of Obligations**

4 IT IS FURTHER ORDERED that each of the obligations imposed by this  
5 Order is independent of all other obligations under the Order, and that the  
6 expiration of any requirements imposed by this Order shall not affect any other  
7 obligation arising under this Order.

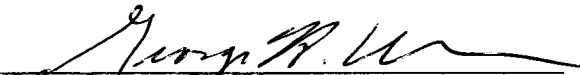
8 **XIII. Costs and Attorneys Fees**

9 IT IS FURTHER ORDERED that each party to this Order bear its own costs  
10 and attorneys fees incurred in connection with this action.


11 **XIV. Continued Jurisdiction**

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


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16 Dated: 16<sup>th</sup> of June, 2008

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21 Hon. George H. Wu  
22 United States District Judge  
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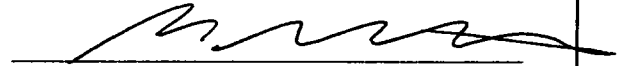
1 **THE PARTIES STIPULATE TO THE FOREGOING ORDER:**

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4  
5  
6 

7 Chris M. Couillou, Esq.  
8 ccouillou@ftc.gov  
9 Counsel for the Plaintiff  
10 Federal Trade Commission  
11 225 Peachtree Street, Suite 1500  
12 Atlanta, GA 30303  
13 (404) 656-1353 (voice)  
14 (404) 656-1379 (fax)

15 

16 Thomas A Brackey II, Esq. (SBN162279)  
17 tbrackey@freundandbrackey;  
18 Freund & Brackey LLP  
19 Counsel for Defendant Elliott  
20 427 North Camden Drive  
21 Beverly Hills, CA 90210  
22 (310) 247-2165 (telephone)  
23 (310) 247-2190 (facsimile)

24 

25 Defendant Scott Elliott

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION

4 FEDERAL TRADE COMMISSION, )

5 Plaintiff )

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12 an individual;  
13 ROB DEBOER,  
14 an individual; and  
15 SCOTT ELLIOTT,  
16 an individual;  
17 Defendants. )

Case No. CV 07-3654 GW FMOx

**AFFIDAVIT CERTIFYING RECEIPT  
OF FINAL ORDER**

18 I, Scott Elliott, being duly sworn, hereby states and affirms as follows:

19 1. My name is \_\_\_\_\_, and I have personal  
20 knowledge of the facts set forth in this Affidavit.

21 2. I am a Defendant in the above-styled civil action.

22 3. On \_\_\_\_\_, 2008, I received a copy of the Final  
23 Judgment and Order for Permanent Injunction, which was signed by the Honorable  
24 George H. Wu and entered by the Court on \_\_\_\_ of  
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26  
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1 \_\_\_\_\_, 2008. A true and correct copy of the Order that was  
2 received is appended to this Affidavit.

3

4 **I declare under penalty of perjury that the foregoing is true and correct.**

5 Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2008 in \_\_\_\_\_

6 County, State of \_\_\_\_\_.

7

8 By: \_\_\_\_\_

9 Scott Elliott

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15 Notary Public

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17 My Commission expires: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I, Chris M. Couillou, hereby certify as follows:

1. I am an attorney employed by and representing the Federal Trade Commission. I am not a party to this action.

2. On June 13, 2008, I served the foregoing document, entitled "Stipulated Final Order for Permanent Injunction and Other Equitable Relief Against Defendant Scott Elliott" on interested parties in this matter by causing a true and correct copy to be filed via the CM/ECF system and mailed, postage prepaid, by United States first class mail, to the following:

Thomas A Brackey II, Esq.  
Derek S. Lemkin, Esq.  
Freund & Brackey LLP  
427 North Camden Drive  
Beverly Hills, CA 90210

Michael Wachtell, Esq.  
Lawrence B. Steinberg, Esq.  
Buchalter Nemer, PC  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017-2457

Mr. John Taylor  
614 Lester  
Houston, Texas 77007

Mr. Robert E. DeBoer  
316 Amberwood Circle  
Irmo, South Carolina 29063

I hereby certify that the foregoing is true and correct. Executed on this 13th day of June 2008 at Atlanta, Georgia.

  
Chris M. Couillou  
Counsel for Plaintiff  
Federal Trade Commission