

1 WILLARD K. TOM
General Counsel

2 DAVID M. NEWMAN (Calif. Bar #54218)
3 ERIC D. EDMONDSON
Federal Trade Commission
4 901 Market Street, Suite 570
San Francisco, CA 94103
5 P: (415) 848-5100; F: (415) 848-5184
dnewman@ftc.gov; eedmondson@ftc.gov

6 RAYMOND E. MCKOWN (Calif. Bar #150975)
7 10877 Wilshire Boulevard, Suite 700
Los Angeles, CA 90024
8 P: (310) 824-4343; F: (310) 824-4380
rmckown@ftc.gov

9 Attorneys for Plaintiff
10 Federal Trade Commission

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13	FEDERAL TRADE COMMISSION,)	Case No.
14	Plaintiff,)	SACV-09-01324 CJC (RNBx)
15	v.)	STIPULATION FOR FINAL
16	COMMERCE PLANET, INC., a)	JUDGMENT AND ORDER
17	corporation, and MICHAEL Hill,)	FOR PERMANENT INJUNCTION
18	CHARLES GUGLIUZZA, and AARON)	AND SETTLEMENT OF CLAIMS
19	GRAVITZ, individually and as)	FOR MONETARY RELIEF
20	Officers of COMMERCE PLANET,)	AGAINST DEFENDANT
	Defendants.)	AARON GRAVITZ

21 Plaintiff, the Federal Trade Commission ("Commission"), has
22 commenced this action by concurrently filing a Complaint for
23 Permanent Injunction and Other Equitable Relief against
24 Defendant Aaron Gravitz, pursuant to Section 13(b) of the
25 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b).
26 The Complaint alleges that Defendant engaged in acts and
27 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.
28 § 45(a). Through this stipulation the parties have agreed to

STIPULATED FINAL ORDER re AARON GRAVITZ

*lodged
order*

CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FRANCISCO
NOV 16 AM 10:19

FILED

ORIGINAL BY FAX

1 entry of the Final Judgment and Order for Permanent Injunction
2 and Settlement of Claims for Monetary Relief Against Defendant
3 Aaron Gravitz ("Order") and hereby request that the Court enter
4 the same to resolve all matters in dispute in this action.
5 Defendant has waived service of the Summons and Complaint.

6 The Court, being advised of the premises, finds

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter of
9 this case and jurisdiction over Defendant Gravitz. Venue in the
10 Central District of California is proper.

11 2. The Complaint states a claim upon which relief may be
12 granted against Defendant Gravitz, and the Commission has the
13 authority to seek the relief it has requested against Defendant
14 Gravitz.

15 3. The activities of Defendant Gravitz were and are in or
16 affecting commerce, as defined in Section 4 of the FTC Act, 15
17 U.S.C. § 44.

18 4. Defendant Gravitz waives

- 19 a. all rights to seek review or otherwise challenge or
20 contest the validity of this Order;
- 21 b. any claim Defendant Gravitz may have against the
22 Commission, its employees, representatives, or agents;
- 23 c. all claims under the Equal Access to Justice Act, 28
24 U.S.C. § 2412, as amended by Pub. L. 104-121, 110
25 Stat. 847, 863-64, as of the date of this Order; and
- 26 d. any rights to attorneys' fees that may have arisen
27 under said provision of law.
- 28

1 5. Defendant Gravitz stipulates and agrees to this Order,
2 without trial or adjudication of any issue of fact or law, to
3 settle and resolve all matters in dispute arising from the
4 Complaint to the date of entry of this Order. Defendant Gravitz
5 does not admit any of the allegations set forth in the
6 Complaint, other than jurisdictional facts, and denies any and
7 all wrongdoing.

8 6. This action and the relief awarded herein are in
9 addition to, and not in lieu of, other remedies as may be
10 provided by law, including both civil and criminal remedies.

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

12 **DEFINITIONS**

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

15 1. **"Billing information"** means any data that enables any
16 person to access a consumer's account, including but
17 not limited to a credit card, checking, savings, share
18 or similar account, utility bill, mortgage loan
19 account, or debit card.

20 2. **"Clear and conspicuous statement"** or statement
21 presented **"clearly and conspicuously"** means

22 a. in print communications, the message shall be in a
23 type size and location sufficiently noticeable for an
24 ordinary consumer to read and comprehend it, in print
25 that contrasts with the background against which it
26 appears;

27 b. in oral communications, the message shall be delivered
28 in a volume and cadence sufficient for an ordinary

1 consumer to hear and comprehend it;

2 c. in communications made through an electronic medium
3 (including but not limited to television, video,
4 radio, and interactive media including but not limited
5 to the Internet, online services and software), the
6 message shall be presented simultaneously in both the
7 audio and visual portions of the communication. In
8 any communication presented solely through visual or
9 audio means, the message may be made through the same
10 means in which the communication is presented. In any
11 communication disseminated by means of an interactive
12 electronic medium, including but not limited to the
13 Internet, online services or software, a disclosure
14 must be unavoidable and presented prior to the
15 consumer incurring any financial obligation. Any
16 audio message shall be delivered in a volume and
17 cadence sufficient for an ordinary consumer to hear
18 and comprehend it. Any visual message shall be of a
19 size and shade, with a degree of contrast to the
20 background against which it appears and shall appear
21 on the screen for a duration and in a location
22 sufficiently noticeable for an ordinary consumer to
23 read and comprehend it; and

24 d. regardless of the medium used to disseminate it, the
25 message shall be in understandable language and
26 syntax. Nothing contrary to, inconsistent with, or in
27 mitigation of the message shall be used in any
28 communication.

- 1 3. **"Defendant,"** unless otherwise specified, means
2 Defendant Aaron Gravitz.
- 3 4. **"Negative Option Feature"** means, in an offer or
4 agreement to sell or provide any product, program or
5 service, a provision under which the consumer's
6 silence or failure to take an affirmative action to
7 reject products or services or to cancel the agreement
8 is interpreted by the seller or provider as acceptance
9 of the offer. Offers or agreements with negative
10 option features include, but are not limited to
11 a. free or introductory price trial offers in which the
12 consumer receives a product, program or service for
13 free or at a nominal or introductory price for an
14 initial period and will incur an obligation to pay or
15 pay a greater amount for the product, program or
16 service if he or she does not take affirmative action
17 to cancel, reject, or return the product, program or
18 service before the end of that period;
19 b. continuity plans in which, subsequent to the
20 consumer's agreement to the plan, the seller or
21 provider automatically ships products to a consumer
22 unless the consumer notifies the seller or provider
23 within a certain time not to ship the products; and
24 c. automatic renewal plans in which the seller or
25 provider automatically renews the agreement and
26 charges the consumer unless the consumer cancels
27 before the renewal.
- 28

1 I. PROHIBITION ON MISREPRESENTATIONS

2 IT IS HEREBY ORDERED that Defendant Gravitz, directly or
3 through any partnership, corporation, subsidiary, division or
4 other device, and his officers, agents, servants, employees, and
5 all persons or entities in active concert or participation with
6 him who receive actual notice of this Order by personal service
7 or otherwise, in connection with the advertising, promoting,
8 offering for sale, or sale of any product, program or service,
9 are hereby permanently restrained and enjoined from
10 misrepresenting, or assisting others in misrepresenting,
11 expressly or by implication, any material fact, including but
12 not limited to

- 13 A. That a product, program or service is offered on a
14 "free," "trial," or "no obligation" basis, or words of
15 similar import, denoting or implying the absence of
16 any obligation on the part of the recipient of the
17 offer to affirmatively act in order to avoid charges
18 if, in fact, a charge will be assessed pursuant to the
19 offer unless the consumer takes affirmative action to
20 cancel;
- 21 B. The amount that a consumer will be charged or billed;
- 22 C. That a consumer will not be charged or billed;
- 23 D. The timing or manner of any charge or bill (including
24 but not limited to the date of the charge and whether
25 it will be a credit card charge or a checking account
26 debit);
- 27 E. The length of any trial period that consumers receive
28 before being charged or billed; and

1 F. That a consumer purchased or agreed to purchase a
2 product, program or service, or that a transaction has
3 been authorized by a consumer, including but not
4 limited to through mailings, email, billings, credit
5 card charges, and checking account debits.

6 **II. REQUIRED DISCLOSURES**

7 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or
8 through any partnership, corporation, subsidiary, division or
9 other device, and his officers, agents, servants, employees, and
10 all persons or entities in active concert or participation with
11 him who receive actual notice of this Order by personal service
12 or otherwise, in connection with the advertising, promoting,
13 offering for sale, or sale of any product, program or service,
14 shall

15 A. Clearly and conspicuously disclose, before consumers
16 are asked to pay money, submit consideration, or
17 reveal billing information

- 18 1. all fees and costs;
19 2. all material restrictions, limitations, or
20 conditions applicable to the purchase, receipt,
21 or use of the product, program or service that is
22 the subject of the offer (including any promotion
23 associated with free products or services, or
24 products or services available on a trial basis);
25 and

- 26 3. all material terms and conditions of any offer
27 with a negative option feature, including but not
28 limited to

- 1 a. the dollar amount of the first payment and
2 when it will be charged, withdrawn, or
3 become due; the dates or frequency (e.g.,
4 monthly, quarterly) of all subsequent
5 charges or payments; and the dollar amount
6 or range of costs of all subsequent charges
7 or payments;
- 8 b. when any trial period begins; the length of
9 any trial period; the specific steps and
10 means by which a cancellation request must
11 be submitted; and the date by or period
12 within which a cancellation request must be
13 received to avoid a charge;
- 14 c. the length of any renewal period; the manner
15 in which a notice not to ship or renew must
16 be submitted; the date by or time period
17 within which a notice not to ship or renew
18 must be received to avoid shipment or
19 renewal (e.g., two weeks after the consumer
20 is advised of an upcoming shipment); and the
21 telephone number, email address, or street
22 address to which such a notice must be
23 directed; and
- 24 d. all material conditions, limitations and
25 restrictions on the ability of the consumer
26 to use any product, program or service that
27 is offered "free," "risk-free," with "no
28 obligation," or "discounted," or words of

1 similar import denoting or implying the
2 absence of any obligation.

3 B. For any transaction involving a service, within the
4 lesser of ten (10) days after the date of the
5 transaction or half the time of any trial period, send
6 the consumer written confirmation of the transaction,
7 either by email or first class mail, clearly and
8 conspicuously identified as such in the email subject
9 line or on the outside of the envelope; such written
10 confirmation shall include clear and conspicuous
11 disclosure of all the information required by
12 Subsection A of this Section and of the procedures by
13 which the consumer can cancel or obtain a refund;

14 C. For any transaction involving a product, provide
15 written confirmation of the transaction with the first
16 product shipment that includes all of the information
17 required by Subsection A of this Section and a clear
18 and conspicuous statement of the procedures by which
19 the consumer can cancel or obtain a refund;

20 D. At least thirty (30) days prior to renewing a
21 consumer's membership, subscription or agreement to
22 purchase for any service (in the case of a membership,
23 subscription or agreement whose term is six (6) months
24 or longer) and prior to the submission for payment of
25 a consumer's billing information for such services,
26 send the consumer written confirmation of such
27 renewal, either by email or first class mail, clearly
28 and conspicuously identified as such in the email

1 subject line or on the outside of the envelope; such
2 written confirmation shall include clear and
3 conspicuous disclosure of all the information required
4 by Subsection A of this Section and of the procedures
5 by which the consumer can cancel or obtain a refund.

6 **III. EXPRESS INFORMED CONSENT**

7 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or
8 through any partnership, corporation, subsidiary, division or
9 other device, and his officers, agents, servants, employees, and
10 all persons or entities in active concert or participation with
11 him who receive actual notice of this Order by personal service
12 or otherwise, in connection with the advertising, promoting,
13 offering for sale, or sale of any product, program or service,
14 are hereby enjoined from directly or indirectly using billing
15 information to obtain payment in connection with the marketing
16 of any product, program or service, without the express informed
17 consent of the consumer, which shall include consent to be
18 charged for the product, program or service using a specified
19 billing account, and the clear and conspicuous disclosure of the
20 information identified in the Section entitled "Required
21 Disclosures" in close proximity to the consumer's express
22 consent to purchase such products or services. In connection
23 with an offer or agreement with a negative option feature, the
24 following requirements must be met to evidence express informed
25 consent:

- 26 A. The consumer's express written authorization to
27 purchase the product, program or service that is the
28 subject of the transaction and the consumer's

1 authorization to assess a charge against a specified
2 account for payment. Such authorization must include
3 the consumer's signature (the term "signature"
4 includes a verifiable electronic or digital form of
5 signature, to the extent such form of signature is
6 recognized as a valid signature under applicable
7 federal law or state contract law); or

8 B. The consumer's express oral authorization to purchase
9 the product, program or service that is the subject of
10 the transaction and the consumer's authorization to
11 assess a charge against a specified account for
12 payment for that product, program or service that is
13 audio-recorded, as follows

- 14 1. the recording must evidence that the consumer,
15 during that transaction, at a minimum, has
16 provided the last four (4) digits of the account
17 number to be charged;
- 18 2. the recording must evidence that the disclosure
19 requirements of the Section entitled "Required
20 Disclosures" have been complied with;
- 21 3. the recording must include the entirety of the
22 transaction;
- 23 4. the recording can be identified and located by
24 either the consumer's name or telephone number;
25 and
- 26 5. a copy of the recording is provided upon request
27 to the consumer, the consumer's bank, credit or
28 debit card company or other billing entity, state

1 attorney general or consumer protection agency,
2 and the Commission.

3 **IV. PROHIBITIONS RELATING TO REFUNDS AND CANCELLATIONS**

4 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or
5 through any partnership, corporation, subsidiary, division or
6 other device, and his officers, agents, servants, employees, and
7 all persons or entities in active concert or participation with
8 him who receive actual notice of this Order by personal service
9 or otherwise, in connection with the advertising, promoting,
10 offering for sale, or sale of any product, program or service,
11 are hereby permanently restrained and enjoined

12 A. From failing to disclose, clearly and conspicuously,
13 before consumers are asked to pay money, submit
14 consideration, or reveal billing information, all
15 material terms and conditions of any cancellation or
16 refund policy, including but not limited to informing
17 consumers that no cancellations or refunds are
18 permitted;

19 B. If a policy allowing consumers to cancel or obtain a
20 refund has been disclosed to the consumer, from
21 failing to honor any request that complies with such
22 policy; and

23 C. From misrepresenting, or assisting others in
24 misrepresenting, expressly or by implication, the
25 terms and conditions of any refund or cancellation
26 policy or policies, including but not limited to, that
27 consumers who accept an offer can easily cancel to
28 avoid the assessment of a charge.

1 **V. MONETARY RELIEF**

2 **IT IS FURTHER ORDERED** that Judgment is hereby entered
3 against Defendant Gravitz in the amount of nineteen million
4 seven hundred thirty thousand dollars (\$19,730,000); *provided,*
5 *however,* that the Judgment for equitable monetary relief shall
6 be suspended upon the satisfaction of the obligations imposed by
7 Subsection A, and subject to the conditions set forth in Section
8 VI of this Order.

9 A. Defendant Gravitz shall pay to the Commission the sum
10 of one hundred ninety-two thousand dollars (\$192,000)
11 in equitable monetary relief, including, but not
12 limited to, consumer redress or disgorgement, within
13 10 business days of the entry of this Order;

14 B. Any funds received by the Commission pursuant to this
15 Order shall be deposited into a fund administered by
16 the Commission or its agent to be used for equitable
17 relief, including but not limited to consumer redress
18 and any attendant expenses for the administration of
19 any redress funds. In the event that direct redress
20 to consumers is wholly or partially impracticable or
21 funds remain after redress is completed, the
22 Commission may apply any remaining funds for such
23 other equitable relief, including but not limited to
24 consumer information remedies, as the Commission
25 determines to be reasonably related to the practices
26 alleged in the Complaint. Any funds not used for such
27 equitable relief shall be deposited to the U.S.

28 Treasury as equitable disgorgement. Defendant Gravitz

1 shall have no right to challenge the Commission's
2 choice of remedies or the manner of distribution;

3 C. Defendant Gravitz agrees that the facts as alleged in
4 the Complaint filed in this action shall be taken as
5 true without further proof in any bankruptcy case or
6 subsequent civil litigation pursued by the Commission
7 to enforce its rights to any payment or money judgment
8 pursuant to this Order, including but not limited to a
9 nondischargeability complaint in any bankruptcy case;
10 Defendant further stipulates and agrees that the facts
11 alleged in the Complaint establish all elements
12 necessary to sustain an action pursuant to Section
13 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
14 § 523(a)(2)(A);

15 D. The judgment entered pursuant to this Section V is
16 equitable monetary relief, solely remedial in nature,
17 and not a fine, penalty, punitive assessment or
18 forfeiture;

19 E. Defendant Gravitz relinquishes all dominion, control
20 and title to the funds paid to the fullest extent
21 permitted by law. Defendant shall make no claim to or
22 demand return of the funds, directly or indirectly,
23 through counsel or otherwise;

24 F. Upon request, Defendant Gravitz is hereby required, in
25 accordance with 31 U.S.C. § 7701, to furnish to the
26 Commission his tax identification number, which shall
27 be used for purposes of collecting and reporting on
28 any delinquent amount arising out of this Order;

1 G. Pursuant to Section 604(1) of the Fair Credit
2 Reporting Act, 15 U.S.C. § 1681b(1), any consumer
3 reporting agency may furnish a consumer report
4 concerning Defendant Gravitz to the Commission, which
5 shall be used for purposes of collecting and reporting
6 on any delinquent amount arising out of this Order.

7 **VI. RIGHT TO REOPEN**

8 **IT IS FURTHER ORDERED** that the Commission's agreement to,
9 and the Court's approval of, this Order are expressly premised
10 on the truthfulness, accuracy and completeness of the financial
11 statements dated February 6 and July 1, 2009, that Defendant
12 Gravitz has submitted to the Commission. If, upon motion by the
13 Commission, the Court finds that his financial statement
14 contains any material misrepresentation or omission, the
15 suspended judgment entered in Section V, above, shall become
16 immediately due and payable, less any amounts turned over to the
17 Commission pursuant to Section V, above, plus interest from the
18 date of entry of this Order as allowed by law; *provided,*
19 *however,* that in all other respects this Order shall remain in
20 full force and effect unless otherwise ordered by the Court;
21 and, *provided further,* that proceedings instituted under this
22 provision would be in addition to, and not in lieu of, any other
23 civil or criminal remedies as may be provided by law, including
24 any other proceedings that the Commission may initiate to
25 enforce this Order. For purposes of this Section VI, Defendant
26 Gravitz waives any right to contest any of the allegations in
27 the Complaint.

1 **VII. MONITORING TO ENSURE COMPLIANCE WITH THE ORDER**

2 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or
3 through any partnership, corporation, subsidiary, division or
4 other device, and his officers, agents, servants, employees, and
5 all persons or entities in active concert or participation with
6 him who receive actual notice of this Order by personal service
7 or otherwise, in connection with the advertising, promoting,
8 offering for sale, or sale of any product, program or service,
9 are hereby permanently restrained and enjoined from failing to
10 take all reasonable steps sufficient to monitor and ensure that
11 all Defendant's agents, representatives, employees, independent
12 contractors, and contract telemarketers comply with the
13 requirements of this Order. Such reasonable steps shall
14 include, but are not limited to

- 15 A. Establishing and following a procedure for receiving
16 and responding to consumer complaints that allege
17 conduct that constitutes a violation of the FTC Act or
18 this Order;
- 19 B. Ascertaining the number and nature of consumer
20 complaints in which each employee or independent
21 contractor is involved;
- 22 C. Promptly and fully investigating any consumer
23 complaint; and
- 24 D. Creating and retaining records demonstrating
25 compliance with this Section, as required by Section
26 X, including but not limited to, copies of all
27 procedures for receiving and responding to consumer
28 complaints, all documents relating to investigations

1 of consumer complaints, and all documents
2 demonstrating how each consumer complaint is responded
3 to or addressed; *provided, however*, that this
4 subsection does not authorize or require any action
5 that violates any federal, state, or local law.

6
7 **VIII. PROHIBITION ON COLLECTION OF PAYMENTS AND
DISCLOSURE OF CUSTOMER INFORMATION**

8 **IT IS FURTHER ORDERED** that Defendant Gravitz, directly or
9 through any partnership, corporation, subsidiary, division or
10 other device, and his officers, agents, servants, employees, and
11 all persons or entities in active concert or participation with
12 him who receive actual notice of this Order by personal service
13 or otherwise, in connection with the advertising, promoting,
14 offering for sale, or sale of any product, program or service by
15 means of a negative option feature, are hereby permanently
16 restrained and enjoined from

17 A. Causing any withdrawal, assessment of a fee, or
18 payment to be made against any consumer account, or
19 otherwise causing collection of, or attempts to
20 collect, payment, directly or indirectly, from a
21 consumer, for any order for any such product, program
22 or service offered or provided to consumers, where the
23 purported authorization for such order occurred prior
24 to the effective date of this Order, without first
25 obtaining from the consumer express informed consent
26 for such order that complies with the requirements of
27 Section III of this Order; and
28

1 B. Selling, renting, leasing, transferring or otherwise
2 disclosing the name, address, birth date, telephone
3 number, email address, Social Security number, credit
4 or debit card number, bank account number, or other
5 financial or identifying personal information of any
6 person from whom or about whom such information was
7 obtained in connection with activities alleged in the
8 Complaint prior to April 1, 2008; *provided, however,*
9 that such financial or identifying personal
10 information may be disclosed to a law enforcement
11 agency or as required by any law, regulation, or court
12 order.

13 **IX. COMPLIANCE MONITORING**

14 **IT IS FURTHER ORDERED** that, for the purpose of (1)
15 monitoring and investigating compliance with any provision of
16 this Order and (2) investigating the accuracy of Defendant's
17 financial statement upon which the Commission's agreement to
18 this Order is expressly premised:

19 A. Within ten (10) days of receipt of written notice from
20 a representative of the Commission, Defendant Gravitz
21 shall submit additional written reports, which are
22 true and accurate and sworn to under penalty of
23 perjury; produce documents for inspection and copying;
24 appear for deposition; and provide entry during normal
25 business hours to any business location in his
26 possession or direct or indirect control, to inspect
27 the business operation;
28

- 1 B. In addition, the Commission is authorized to use all
2 other lawful means, including but not limited to:
3 1. obtaining discovery from any person, without
4 further leave of court, using the procedures
5 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
6 45, and 69;
7 2. posing as consumers and suppliers to Defendant
8 Gravitz, or any other entity managed or
9 controlled in whole or in part by Defendant
10 Gravitz, or their employees, without the
11 necessity of identification or prior notice; and

- 12 C. Defendant Gravitz shall permit representatives of the
13 Commission to interview any employer, consultant,
14 independent contractor, representative, agent, or
15 employee who has agreed to such an interview, relating
16 in any way to any conduct subject to this Order. The
17 person interviewed may have counsel present;

18 *Provided, however,* that nothing in this Order shall limit the
19 Commission's lawful use of compulsory process, pursuant to
20 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
21 obtain any documentary material, tangible things, testimony, or
22 information relevant to unfair or deceptive acts or practices in
23 or affecting commerce (within the meaning of 15 U.S.C. §
24 45(a)(1)).

1 X. COMPLIANCE REPORTING BY DEFENDANT

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

4 A. For a period of three (3) years from the date of entry
5 of this Order, Defendant Gravitz shall notify the
6 Commission of the following:

- 7 1. Any changes in his residence, mailing addresses,
8 and telephone numbers, within ten (10) days of
9 the date of such change;
- 10 2. Any changes in his employment status (including
11 self-employment), and any change in his ownership
12 in any business entity, within ten (10) days of
13 the date of such change. Such notice shall
14 include the name and address of each business
15 that he is affiliated with, employed by, creates
16 or forms, or performs services for; a detailed
17 description of the nature of the business; and a
18 detailed description of his duties and
19 responsibilities in connection with the business
20 or employment; and
- 21 3. Any changes in his name or use of any aliases or
22 fictitious names; and
- 23 4. Any changes in structure of any business entity
24 that Defendant Gravitz directly or indirectly
25 controls, or has an ownership interest in, that
26 may affect compliance obligations arising under
27 this Order, including but not limited to
28 incorporation or other organization; a

1 dissolution, assignment, sale, merger, or other
2 action that would result in the emergence of a
3 successor entity; the creation or dissolution of
4 a subsidiary, parent, or affiliate that engages
5 in any acts or practices subject to this Order;
6 or a change in the business name or address, at
7 least thirty (30) days prior to such change;
8 *provided, however, that, with respect to any*
9 *proposed change in the business entity about*
10 *which a Defendant learns less than thirty (30)*
11 *days prior to the date such action is to take*
12 *place, such Defendant shall notify the Commission*
13 *as soon as is practicable after obtaining such*
14 *knowledge.*

- 15 B. One hundred eighty (180) days after the date of entry
16 of this Order and annually thereafter for a period of
17 three (3) years, Defendant Gravitz shall provide a
18 written report to the Commission, which is true and
19 accurate and sworn to under penalty of perjury,
20 setting forth in detail the manner and form in which
21 he has complied and is complying with this Order.
22 This report shall include, but not be limited to
- 23 1. His then-current residence address, mailing
24 addresses, and telephone numbers;
 - 25 2. His then-current employment status (including
26 self-employment), including the name, addresses,
27 and telephone numbers of each business that he is
28 affiliated with, employed by, or performs

1 services for; a detailed description of the
2 nature of the business; and a detailed
3 description of his duties and responsibilities in
4 connection with the business or employment;

5 3. a copy of each acknowledgment of receipt of this
6 Order obtained pursuant to Section XI; and

7 4. any other changes required to be reported under
8 subparagraph A of this Section IX;

9 C. Defendant Gravitz shall notify the Commission of the
10 filing of a bankruptcy petition within fifteen (15)
11 days of filing;

12 D. For the purposes of this Order, Defendant Gravitz
13 shall, unless otherwise directed by the Commission's
14 authorized representatives, send by overnight courier
15 all reports and notifications required by this Order
16 to the Commission to the following address:

17 Associate Director for Enforcement
18 Federal Trade Commission
19 600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
RE: FTC v. Commerce Planet, Inc.;

20 *Provided that, in lieu of overnight courier,*
21 Defendants may send such reports or notifications by
22 first-class mail, but only if he contemporaneously
23 sends an electronic version of such report or
24 notification to the Commission at DEBrief@ftc.gov; and

25 E. For purposes of the compliance reporting and
26 monitoring required by this Order, the Commission is
27 authorized to communicate with Defendant Gravitz or,
28 at Defendant Gravitz's request, his counsel.

1 **XI. RECORD KEEPING PROVISIONS**

2 **IT IS FURTHER ORDERED** that, for a period of six (6) years
3 from the date of entry of this Order, in connection with any
4 business which is managed or controlled in whole or in part by
5 Defendant Gravitz and which is engaged in recurring billing of
6 consumers, Defendant Gravitz and his agents, servants,
7 employees, and those persons in active concert or participation
8 with him, whether acting directly or through any sole
9 proprietorship, partnership, limited liability company,
10 corporation, subsidiary, branch, division, or other entity, who
11 receive actual notice of this Order by personal service or
12 otherwise, are hereby restrained and enjoined from failing to
13 create and retain the following records:

- 14 A. Accounting records that reflect the cost of products
15 or services sold, revenues generated, and the
16 disbursement of such revenues;
- 17 B. Personnel records accurately reflecting the name,
18 address, and telephone number of each person employed
19 in any capacity by such business, including as an
20 independent contractor; that person's job title or
21 position; the date upon which the person commenced
22 work; and the date and reason for the person's
23 termination, if applicable;
- 24 C. Customer files containing the names, addresses, phone
25 numbers, dollar amounts paid, quantity of items or
26 services purchased, and description of items or
27 services purchased, to the extent such information is
28 obtained in the ordinary course of business;

- 1 D. Complaints and refund requests (whether received
2 directly, indirectly or through any third party) and
3 any responses to those complaints or requests;
- 4 E. Copies of all sales scripts, training materials,
5 advertisements, or other marketing materials; and
- 6 F. All records and documents necessary to demonstrate
7 full compliance with each provision of this Order,
8 including but not limited to, copies of all procedures
9 for receiving and responding to consumer complaints,
10 all documents relating to investigations of consumer
11 complaints, and all documents demonstrating how each
12 consumer complaint was responded to or addressed,
13 required by Section VII; acknowledgments of receipt of
14 this Order, required by Sections XI and XII; and all
15 reports submitted to the Commission pursuant to
16 Section X.

17 **XII. DISTRIBUTION OF ORDER BY DEFENDANT**

18 **IT IS FURTHER ORDERED** that, for a period of five (5) years
19 from the date of entry of this Order, Defendant Gravitz shall
20 deliver copies of this Order as directed below:

- 21 A. For any business that Defendant Gravitz controls,
22 directly or indirectly, or in which Defendant Gravitz
23 has a majority ownership interest, Defendant Gravitz
24 must deliver a copy of this Order to (1) all
25 principals, officers, directors, and managers of that
26 business; (2) all employees, agents, and
27 representatives of that business who engage in conduct
28 related to the subject matter of the Order; and (3)

1 any business entity resulting from any change in
2 structure set forth in Subsection A.4 of the Section
3 entitled "Compliance Reporting by Defendant." For
4 current personnel, delivery shall be within five (5)
5 days of service of this Order upon Defendant Gravitz.
6 For new personnel, delivery shall occur prior to them
7 assuming their responsibilities. For any business
8 entity resulting from any change in structure set
9 forth in Subsection A.4 of the Section entitled
10 "Compliance Reporting by Defendant," delivery shall be
11 at least ten (10) days prior to the change in
12 structure.

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

19 C. Defendant Gravitz must secure a signed and dated
20 statement acknowledging receipt of the Order, within
21 thirty (30) days of delivery, from all persons
22 receiving a copy of the Order pursuant to this
23 Section.

24 **XIII. COOPERATION WITH FTC COUNSEL**

25 **IT IS FURTHER ORDERED** that Defendant Gravitz shall, in
26 connection with this action or any subsequent investigations
27 related to or associated with the transactions or the
28 occurrences that are the subject of the FTC's Complaint,

1 cooperate in good faith with the FTC and appear at such places
2 and times as the FTC shall reasonably request, after written
3 notice, for interviews, conferences, pretrial discovery, review
4 of documents, and for such other matters as may be reasonably
5 requested by the FTC. If requested in writing by the FTC,
6 Defendant Gravitz shall appear and provide truthful testimony in
7 any trial, deposition, or other proceeding related to or
8 associated with the transactions or the occurrences that are the
9 subject of the Complaint, without the service of a subpoena.

10 **XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**


11 **IT IS FURTHER ORDERED** that Defendant Gravitz, within five
12 (5) business days of receipt of this Order as entered by the
13 Court, must submit to the Commission a truthful sworn statement
14 acknowledging receipt of this Order.

15 **XV. RETENTION OF JURISDICTION**

16 **IT IS FURTHER ORDERED** that this Court shall retain
17 jurisdiction of this matter for purposes of construction,
18 modification, and enforcement of this Order.

19 **STIPULATED AND AGREED TO BY:**

20 
21 Aaron Gravitz, Defendant

22 
23 William I. Rothbard
24 1217 Yale Street, Suite 104
25 Santa Monica, California 90404
26 Phone: (310) 453-8713
27 Facsimile: (310) 453-8715
28 Email: Brothbard@roadrunner.com
Attorney for Defendant Gravitz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

David M. Newman

DAVID M. NEWMAN
ERIC D. EDMONDSON
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5100
Facsimile: (415) 848-5184
Email: dnewman@ftc.gov; eedmondson@ftc.gov
Attorneys for Plaintiff