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STIPULATION FOR FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND SETTLEMENT OF CLAIMS AGAINST DEFENDANT MICHAEL HILL

*lodged order*

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

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

**BY FAX ORIGINAL**

1 of Claims for Monetary Relief Against Defendant Michael Hill  
2 ("Order") and hereby request that the Court enter the same to  
3 resolve all matters in dispute in this action. Defendant has  
4 waived service of the Summons and Complaint.

5 The Court, being advised of the premises, finds:

6 **FINDINGS**

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

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

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

17 4. Defendant Hill waives

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

27 5. Defendant Hill stipulates and agrees to this Order,  
28 without trial or adjudication of any issue of fact or law, to

1 settle and resolve all matters in dispute arising from the  
2 Complaint to the date of entry of this Order. Defendant Hill  
3 does not admit any of the allegations set forth in the  
4 Complaint, other than jurisdictional facts, and denies any and  
5 all wrongdoing.

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

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

10 **DEFINITIONS**

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

- 13 1. **"Billing information"** means any data that enables any  
14 person to access a consumer's account, including but  
15 not limited to a credit card, checking, savings, share  
16 or similar account, utility bill, mortgage loan  
17 account, or debit card.
- 18 2. **"Clear and conspicuous statement"** or statement  
19 presented **"clearly and conspicuously"** means
- 20 a. in print communications, the message shall be in a  
21 type size and location sufficiently noticeable for an  
22 ordinary consumer to read and comprehend it, in print  
23 that contrasts with the background against which it  
24 appears;
- 25 b. in oral communications, the message shall be delivered  
26 in a volume and cadence sufficient for an ordinary  
27 consumer to hear and comprehend it;
- 28 c. in communications made through an electronic medium

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

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

- 27 3. "**Defendant**," unless otherwise specified, means  
28 Defendant Michael J. Hill.

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

26                           **I.    PROHIBITION ON MISREPRESENTATIONS**

27           **IT IS HEREBY ORDERED** that Defendant Hill, directly or  
28           through any partnership, corporation, subsidiary, division or

1 other device, and his officers, agents, servants, employees, and  
2 all persons or entities in active concert or participation with  
3 him who receive actual notice of this Order by personal service  
4 or otherwise, in connection with the advertising, promoting,  
5 offering for sale, or sale of any product, program or service,  
6 are hereby permanently restrained and enjoined from  
7 misrepresenting, or assisting others in misrepresenting,  
8 expressly or by implication, any material fact, including but  
9 not limited to

10 A. That a product, program or service is offered on a  
11 "free," "trial," or "no obligation" basis, or words of  
12 similar import, denoting or implying the absence of  
13 any obligation on the part of the recipient of the  
14 offer to affirmatively act in order to avoid charges  
15 if, in fact, a charge will be assessed pursuant to the  
16 offer unless the consumer takes affirmative action to  
17 cancel;

18 B. The amount that a consumer will be charged or billed;

19 C. That a consumer will not be charged or billed;

20 D. The timing or manner of any charge or bill (including  
21 but not limited to the date of the charge and whether  
22 it will be a credit card charge or a checking account  
23 debit);

24 E. The length of any trial period that consumers receive  
25 before being charged or billed; and

26 F. That a consumer purchased or agreed to purchase a  
27 product, program or service, or that a transaction has  
28 been authorized by a consumer, including but not

1 limited to through mailings, email, billings, credit  
2 card charges, and checking account debits.

3 **II. REQUIRED DISCLOSURES**

4 **IT IS FURTHER ORDERED** that Defendant Hill, 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 shall

12 A. Clearly and conspicuously disclose, before consumers  
13 are asked to pay money, submit consideration, or  
14 reveal billing information

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

23 3. all material terms and conditions of any offer  
24 with a negative option feature, including but not  
25 limited to

- 26 a. the dollar amount of the first payment and  
27 when it will be charged, withdrawn, or  
28 become due; the dates or frequency (e.g.,

1 monthly, quarterly) of all subsequent  
2 charges or payments; and the dollar amount  
3 or range of costs of all subsequent charges  
4 or payments;

5 b. when any trial period begins; the length of  
6 any trial period; the specific steps and  
7 means by which a cancellation request must  
8 be submitted; and the date by or period  
9 within which a cancellation request must be  
10 received to avoid a charge;

11 c. the length of any renewal period; the manner  
12 in which a notice not to ship or renew must  
13 be submitted; the date by or time period  
14 within which a notice not to ship or renew  
15 must be received to avoid shipment or  
16 renewal (e.g., two weeks after the consumer  
17 is advised of an upcoming shipment); and the  
18 telephone number, email address, or street  
19 address to which such a notice must be  
20 directed; and

21 d. all material conditions, limitations and  
22 restrictions on the ability of the consumer  
23 to use any product, program or service that  
24 is offered "free," "risk-free," with "no  
25 obligation," or "discounted," or words of  
26 similar import denoting or implying the  
27 absence of any obligation.

28 B. For any transaction involving a service, within the



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

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

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

1 by Subsection A of this Section and of the procedures  
2 by which the consumer can cancel or obtain a refund.

3 **III. EXPRESS INFORMED CONSENT**

4 **IT IS FURTHER ORDERED** that Defendant Hill, 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 enjoined from directly or indirectly using billing  
12 information to obtain payment in connection with the marketing  
13 of any product, program or service, without the express informed  
14 consent of the consumer, which shall include consent to be  
15 charged for the product, program or service using a specified  
16 billing account, and the clear and conspicuous disclosure of the  
17 information identified in the Section entitled "Required  
18 Disclosures" in close proximity to the consumer's express  
19 consent to purchase such products or services. In connection  
20 with an offer or agreement with a negative option feature, the  
21 following requirements must be met to evidence express informed  
22 consent:

- 23 A. The consumer's express written authorization to  
24 purchase the product, program or service that is the  
25 subject of the transaction and the consumer's  
26 authorization to assess a charge against a specified  
27 account for payment. Such authorization must include  
28 the consumer's signature (the term "signature"

1 includes a verifiable electronic or digital form of  
2 signature, to the extent such form of signature is  
3 recognized as a valid signature under applicable  
4 federal law or state contract law); or

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

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

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

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

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

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

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

26   **V. MONETARY RELIEF**

27           **IT IS FURTHER ORDERED** that Judgment is hereby entered  
28 against Defendant Hill in the amount of nineteen million seven

1 hundred thirty thousand dollars (\$19,730,000); *provided*,  
2 *however*, that the Judgment for equitable monetary relief shall  
3 be suspended upon the satisfaction of the obligations imposed by  
4 Subsections A through D, and subject to the conditions set forth  
5 in Section VI of this Order.

6 A. Defendant Hill shall pay to the Commission the sum of  
7 two hundred thirty thousand dollars (\$230,000) in  
8 equitable monetary relief, including, but not limited  
9 to, consumer redress or disgorgement, within 10  
10 business days of the entry of this Order;

11 B. Defendant Hill shall pay to the FTC on or by March 10,  
12 2010, all money paid to him by Lenco Mobile, Inc., in  
13 satisfaction of the promissory note issued to  
14 Defendant Hill by Lenco Mobile, a copy of which is  
15 included as Attachment A to this Order. In the event  
16 Lenco Mobile defaults on said promissory note,  
17 Defendant Hill shall assign the promissory note to the  
18 FTC;

19 C. Immediately upon entry of this order, Defendant Hill  
20 shall assign to the FTC the proceeds of any recovery  
21 in the lawsuit *Moser-Downum Investment Group, LLC v.*  
22 *Kennedy Funding, Inc. et al*, to which he is entitled  
23 pursuant to the Settlement and Mutual Release  
24 Agreement described in Attachment B to this Order;

25 D. Immediately upon entry of this order, Defendant Hill  
26 shall assign to the Commission the promissory note in  
27 the amount of \$200,000 secured by the real property  
28 described in Attachment C to this Order. The FTC

1 shall refrain from executing on its lien and security  
2 interest in the aforementioned real property until  
3 such time as the properties are sold or ownership is  
4 otherwise transferred;

5 E. Defendant Hill shall pay to the FTC all money and the  
6 fair market value of any goods or services that he  
7 receives in satisfaction of any undocumented loan  
8 extended by Hill to any individual or business between  
9 June 1, 2005 and the date of this Order;

10 F. Any funds received by the Commission pursuant to this  
11 Order shall be deposited into a fund administered by  
12 the Commission or its agent to be used for equitable  
13 relief, including but not limited to consumer redress  
14 and any attendant expenses for the administration of  
15 any redress funds. In the event that direct redress  
16 to consumers is wholly or partially impracticable or  
17 funds remain after redress is completed, the  
18 Commission may apply any remaining funds for such  
19 other equitable relief, including but not limited to  
20 consumer information remedies, as the Commission  
21 determines to be reasonably related to the practices  
22 alleged in the Complaint. Any funds not used for such  
23 equitable relief shall be deposited to the U.S.  
24 Treasury as equitable disgorgement. Defendant Hill  
25 shall have no right to challenge the Commission's  
26 choice of remedies or the manner of distribution;

27 G. Defendant Hill agrees that the facts as alleged in the  
28 Complaint filed in this action shall be taken as true

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

11 H. The judgment entered pursuant to this Section V is  
12 equitable monetary relief, solely remedial in nature,  
13 and not a fine, penalty, punitive assessment or  
14 forfeiture;

15 I. Defendant Hill relinquishes all dominion, control and  
16 title to the funds paid to the fullest extent  
17 permitted by law. Defendant shall make no claim to or  
18 demand return of the funds, directly or indirectly,  
19 through counsel or otherwise;

20 J. Upon request, Defendant Hill is hereby required, in  
21 accordance with 31 U.S.C. § 7701, to furnish to the  
22 Commission his tax identification number, which shall  
23 be used for purposes of collecting and reporting on  
24 any delinquent amount arising out of this Order;

25 K. Pursuant to Section 604(1) of the Fair Credit  
26 Reporting Act, 15 U.S.C. § 1681b(1), any consumer  
27 reporting agency may furnish a consumer report  
28 concerning Defendant Hill to the Commission, which

1 shall be used for purposes of collecting and reporting  
2 on any delinquent amount arising out of this Order.

3 **VI. RIGHT TO REOPEN**

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



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

2           **IT IS FURTHER ORDERED** that Defendant Hill, 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 Hill, 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 B. Selling, renting, leasing, transferring or otherwise

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

12 **IX. COMPLIANCE MONITORING**

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

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

27 B. In addition, the Commission is authorized to use all  
28 other lawful means, including but not limited to:

- 1 1. obtaining discovery from any person, without
- 2 further leave of court, using the procedures
- 3 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,
- 4 45, and 69;
- 5 2. posing as consumers and suppliers to Defendant
- 6 Hill, or any other entity managed or controlled
- 7 in whole or in part by Defendant Hill, or their
- 8 employees, without the necessity of
- 9 identification or prior notice; and

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

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

23 **X. COMPLIANCE REPORTING BY DEFENDANT**

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

- 26 A. For a period of three (3) years from the date of entry
- 27 of this Order, Defendant Hill shall notify the
- 28 Commission of the following:

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

1 least thirty (30) days prior to such change;  
2 *provided, however,* that, with respect to any  
3 proposed change in the business entity about  
4 which Defendant Hill learns less than thirty (30)  
5 days prior to the date such action is to take  
6 place, Defendant Hill shall notify the Commission  
7 as soon as is practicable after obtaining such  
8 knowledge.

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

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

3 C. Defendant Hill shall notify the Commission of the  
4 filing of a bankruptcy petition within fifteen (15)  
5 days of filing;

6 D. For the purposes of this Order, Defendant Hill shall,  
7 unless otherwise directed by the Commission's  
8 authorized representatives, send by overnight courier  
9 all reports and notifications required by this Order  
10 to the Commission to the following address:

11 Associate Director for Enforcement  
12 Federal Trade Commission  
13 600 Pennsylvania Avenue, N.W., Room NJ-2122  
14 Washington, D.C. 20580  
15 RE: FTC v. Commerce Planet, Inc.;

16 *Provided* that, in lieu of overnight courier, Defendant  
17 Hill may send such reports or notifications by first-  
18 class mail, but only if he contemporaneously sends an  
19 electronic version of such report or notification to  
20 the Commission at DEBrief@ftc.gov; and

21 E. For purposes of the compliance reporting and  
22 monitoring required by this Order, the Commission is  
23 authorized to communicate with Defendant Hill or, at  
24 Defendant Hill's request, his counsel.

25 **XI. RECORD KEEPING PROVISIONS**

26 **IT IS FURTHER ORDERED** that, for a period of six (6) years  
27 from the date of entry of this Order, in connection with any  
28 business which is managed or controlled in whole or in part by  
Defendant Hill and which is engaged in recurring billing of  
consumers, Defendant Hill and his agents, servants, employees,

1 and those persons in active concert or participation with him,  
2 whether acting directly or through any sole proprietorship,  
3 partnership, limited liability company, corporation, subsidiary,  
4 branch, division, or other entity, who receive actual notice of  
5 this Order by personal service or otherwise, are hereby  
6 restrained and enjoined from failing to create and retain the  
7 following records:

- 8       A. Accounting records that reflect the cost of products  
9       or services sold, revenues generated, and the  
10       disbursement of such revenues;
- 11       B. Personnel records accurately reflecting the name,  
12       address, and telephone number of each person employed  
13       in any capacity by such business, including as an  
14       independent contractor; that person's job title or  
15       position; the date upon which the person commenced  
16       work; and the date and reason for the person's  
17       termination, if applicable;
- 18       C. Customer files containing the names, addresses, phone  
19       numbers, dollar amounts paid, quantity of items or  
20       services purchased, and description of items or  
21       services purchased, to the extent such information is  
22       obtained in the ordinary course of business;
- 23       D. Complaints and refund requests (whether received  
24       directly, indirectly or through any third party) and  
25       any responses to those complaints or requests;
- 26       E. Copies of all sales scripts, training materials,  
27       advertisements, or other marketing materials; and
- 28       F. All records and documents necessary to demonstrate



1 full compliance with each provision of this Order,  
2 including but not limited to, copies of all procedures  
3 for receiving and responding to consumer complaints,  
4 all documents relating to investigations of consumer  
5 complaints, and all documents demonstrating how each  
6 consumer complaint was responded to or addressed,  
7 required by Section VII; acknowledgments of receipt of  
8 this Order, required by Sections XI and XII; and all  
9 reports submitted to the Commission pursuant to  
10 Section X.

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

12 **IT IS FURTHER ORDERED** that, for a period of five (5) years  
13 from the date of entry of this Order, Defendant Hill shall  
14 deliver copies of this Order as directed below:

- 15 A. For any business that Defendant Hill controls,  
16 directly or indirectly, or in which Defendant Hill has  
17 a majority ownership interest, Defendant Hill must  
18 deliver a copy of this Order to (1) all principals,  
19 officers, directors, and managers of that business;  
20 (2) all employees, agents, and representatives of that  
21 business who engage in conduct related to the subject  
22 matter of the Order; and (3) any business entity  
23 resulting from any change in structure set forth in  
24 Subsection A.4 of the Section entitled "Compliance  
25 Reporting by Defendant." For current personnel,  
26 delivery shall be within five (5) days of service of  
27 this Order upon Defendant Hill. For new personnel,  
28 delivery shall occur prior to them assuming their

1 responsibilities. For any business entity resulting  
2 from any change in structure set forth in Subsection  
3 A.4 of the Section entitled "Compliance Reporting by  
4 Defendant," delivery shall be at least ten (10) days  
5 prior to the change in structure.

6 B. For any business where Defendant Hill is not a  
7 controlling person of a business but otherwise engages  
8 in conduct related to the subject matter of this  
9 Order, Defendant Hill must deliver a copy of this  
10 Order to all principals and managers of such business  
11 before engaging in such conduct.

12 C. Defendant Hill must secure a signed and dated  
13 statement acknowledging receipt of the Order, within  
14 thirty (30) days of delivery, from all persons  
15 receiving a copy of the Order pursuant to this  
16 Section.

17 **XIII. COOPERATION WITH FTC COUNSEL**

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

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

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

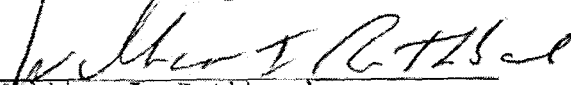
4 **IT IS FURTHER ORDERED** that Defendant Hill, within five (5)  
5 business days of receipt of this Order as entered by the Court,  
6 must submit to the Commission a truthful sworn statement  
7 acknowledging receipt of this Order.

8 **XV. RETENTION OF JURISDICTION**

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

12 **STIPULATED AND AGREED TO BY:**

13   
14 Michael Hill, Defendant

15   
16 William I. Rothbard  
17 1217 Yale Street, Suite 104  
18 Santa Monica, California 90404  
19 Phone: (310) 453-8713  
Facsimile: (310) 453-8715  
Email: Brothbard@roadrunner.com  
Attorney for Defendant Hill

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*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: dneuman@ftc.gov; eedmondson@ftc.gov  
Attorneys for Plaintiff

# Attachment A

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**Pages 30 - 36 Redacted**

# Attachment B

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**Pages 38 - 53 Redacted**



# Attachment C

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**Pages 55 - 59 Redacted**