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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

APEX CAPITAL GROUP, LLC, et al.,

Defendants.

Case No. 2:18-cv-09573-JFW (JPRx)

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND MONETARY JUDGMENT**

On November 13, 2018, Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, subsequently amended as First Amended Complaint for Permanent Injunction and Other Equitable Relief, (as amended, “Complaint”), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404, and Section 918(c) of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c). The Commission and Defendant David Barnett stipulate to the entry of this [Proposed] Stipulated Order for Permanent Injunction and Monetary Judgment to resolve all matters in dispute in this action between them.

1 B. “**Add-On**” means any additional good or service that is offered to the
2 consumer for purchase immediately preceding, at the time of, or closely proximate
3 in time after the consumer’s purchase of a different good or service, where the
4 different good or service is or was advertised, marketed, promoted, or offered for
5 sale by the Settling Defendant, whether directly or through an intermediary,
6 including by consulting, planning, participating, facilitating, or advising.

7 C. “**Affiliate**” means any person, including any third-party marketer,
8 who participates in an Affiliate Program.

9 D. “**Affiliate Network**” means any person who provides another person
10 with Affiliates for an Affiliate Program or with whom any person contracts as an
11 Affiliate to promote any good or service.

12 E. “**Affiliate Program**” means any arrangement under which the Settling
13 Defendant pays, or offers to pay, or provides, or offers to provide, any form of
14 consideration to any third party, either directly or through an Affiliate Network
15 (i) to provide the Settling Defendant with, or refer to the Settling Defendant,
16 potential or actual customers; or (ii) otherwise to market, advertise, or offer for sale
17 any good or service on behalf of the Settling Defendant.

18 F. “**Asset**” means any legal or equitable interest in, right to, or claim to,
19 any property, wherever located and by whomever held.

20 G. “**Billing Information**” means any data that enables any person to
21 access a customer’s account, such as a credit card, checking, savings, share, or
22 similar account, utility bill, mortgage loan account, or debit card.

23 H. “**Chargeback**” means a procedure whereby an issuing bank or other
24 financial institution charges all or part of an amount of a credit or debit transaction
25 back to the acquiring or merchant bank.

26 I. “**Clear and Conspicuous**” or “**Clearly and Conspicuously**” means
27 that a required disclosure is difficult to miss (i.e., easily noticeable) and easily
28 understandable by ordinary consumers, including in all of the following ways:

1 1. In any communication that is solely visual or solely audible, the
2 disclosure must be made through the same means through which the
3 communication is presented. In any communication made through both visual and
4 audible means, such as a television advertisement, the disclosure must be presented
5 simultaneously in both the visual and audible portions of the communication even
6 if the representation requiring the disclosure is made in only one means;

7 2. A visual disclosure, by its size, contrast, location, the length of
8 time it appears, and other characteristics, must stand out from any accompanying
9 text or other visual elements so that it is easily noticed, read, and understood;

10 3. An audible disclosure, including by telephone or streaming
11 video, must be delivered in a volume, speed, and cadence sufficient for ordinary
12 consumers to easily hear and understand it;

13 4. In any communication using an interactive electronic medium,
14 such as the Internet or software, the disclosure must be unavoidable;

15 5. On a product label, the disclosure must be presented on the
16 principal display panel;

17 6. The disclosure must use diction and syntax understandable to
18 ordinary consumers and must appear in each language in which the representation
19 that requires the disclosure appears;

20 7. The disclosure must comply with these requirements in each
21 medium through which it is received, including all electronic devices and
22 face-to-face communications;

23 8. The disclosure must not be contradicted or mitigated by, or
24 inconsistent with, anything else in the communication; and

25 9. When the representation or sales practice targets a specific
26 audience, such as children, the elderly, or the terminally ill, “ordinary consumers”
27 includes reasonable members of that group.
28

1 J. **“Close Proximity”** means immediately adjacent to the triggering
2 representation. In the case of advertisements disseminated verbally or through
3 audible means, the disclosure shall be made as soon as practicable after the
4 triggering representation.

5 K. **“Commission”** or **“FTC”** means the Federal Trade Commission.

6 L. **“Corporate Defendants”** means Apex Capital Group, LLC, Capstone
7 Capital Solutions Limited, Clik Trix Limited, Empire Partners Limited, Interzoom
8 Capital Limited, Lead Blast Limited, Mountain Venture Solutions Limited, Nutra
9 Global Limited, Omni Group Limited, Rendezvous IT Limited, Sky Blue Media
10 Limited, and Tactic Solutions Limited, and each of their subsidiaries, affiliates,
11 successors, and assigns.

12
13 M. **“Cosmetic”** means:

14 1. articles to be rubbed, poured, sprinkled, or sprayed on,
15 introduced into, or otherwise applied to the human body or any part thereof
16 intended for cleansing, beautifying, promoting attractiveness, or altering the
17 appearance; and

18 2. articles intended for use as a component of any such article,
19 except that such term shall not include soap.

20 N. **“Credit Card Laundering”** means:

21 1. Presenting or depositing into, or causing or allowing another to
22 present or deposit into, the credit card system for payment, a Credit Card Sales
23 Draft generated by a transaction that is not the result of a credit card transaction
24 between the cardholder and the Merchant;

25 2. Employing, soliciting, or otherwise causing or allowing a
26 Merchant, or an employee, representative, or agent of a Merchant, to present to or
27 deposit into the credit card system for payment, a Credit Card Sales Draft
28

1 generated by a transaction that is not the result of a credit card transaction between
2 the cardholder and the Merchant; or

3 3. Obtaining access to the credit card system through the use of a
4 business relationship or an affiliation with a Merchant, when such access is not
5 authorized by the Merchant Account agreement or the applicable credit card
6 system.

7 O. **“Credit Card Sales Draft”** means any record or evidence of a credit
8 card transaction.

9 P. **“Defendants”** means the Corporate Defendants and individual
10 defendants David Barnett and Phillip Peikos.

11 Q. **“Dietary Supplement”** means:

12 1. any product labeled as a dietary supplement or otherwise
13 represented as a dietary supplement; or

14 2. any pill, tablet, capsule, powder, softgel, gelcap, liquid, or other
15 similar form containing one or more ingredients that are a vitamin, mineral, herb or
16 other botanical, amino acid, probiotic, or other dietary substance for use by humans
17 to supplement the diet by increasing the total dietary intake, or a concentrate,
18 metabolite, constituent, extract, or combination of any ingredient described above,
19 that is intended to be ingested, and is not represented to be used as a conventional
20 Food or as a sole item of a meal or the diet.

21 R. **“Drug”** means:

22 1. articles recognized in the official United States Pharmacopoeia,
23 official Homeopathic Pharmacopoeia of the United States, or official National
24 Formulary, or any supplement to any of them;

25 2. articles intended for use in the diagnosis, cure, mitigation,
26 treatment, or prevention of disease in humans or other animals;

27 3. articles (other than Food) intended to affect the structure or any
28 function of the body of humans or other animals; and

1 4. articles intended for use as a component of any article specified
2 in Subsection (1), (2), or (3); but does not include devices or their components,
3 parts, or accessories.

4 S. “**Food**” means:

- 5 1. any article used for food or drink for humans or other animals;
- 6 2. chewing gum; and
- 7 3. any article used for components of any such article.

8 T. “**Including**” means including but not limited to.

9 U. “**Merchant**” means any natural person, entity, corporation,
10 partnership, or association of persons who is authorized under a written contract
11 with an Acquirer to honor or accept credit cards, or to transmit or process for
12 payment credit card payments, for the purchase of good or services.

13 V. “**Merchant Account**” means an account with an Acquirer that
14 authorizes and allows a Merchant to honor or accept credit cards, or to transmit or
15 process for payment credit card payments, for the purchase of goods or services or
16 a charitable contribution.

17 W. “**Negative Option Feature**” means, in an offer or agreement to sell or
18 provide any good or service, a provision under which the consumer’s silence or
19 failure to take affirmative action to reject a good or service, or to cancel the
20 agreement, is interpreted by the seller or provider as acceptance or continuing
21 acceptance of the offer.

22 X. “**Preauthorized Electronic Fund Transfer**” means an electronic
23 fund transfer authorized in advance to recur at substantially regular intervals.

24 Y. “**Receiver**” means Thomas McNamara, as set forth in Section XIV of
25 the Stipulated Preliminary Injunction with Asset Freeze, Receiver, and Other
26 Equitable Relief Against Defendant David Barnett (“Preliminary Injunction”), and
27 any deputy receivers that shall be named by the Receiver.

28

1 B. Before a consumer consents to pay for such product, service, or
2 program, failing to disclose, or assisting others in failing to disclose in a Clear and
3 Conspicuous manner all material terms and conditions of any refund or
4 cancellation policy, including:

5 1. The specific steps and means by which such requests must be
6 submitted;

7 2. The customer service telephone number or numbers that a
8 customer must call to cancel and/or return goods or services;

9 3. The email address, web address, or street address to which such
10 requests must be directed;

11 4. Any mechanism that customers must use to return any products,
12 including any requirement for specific tracking methods or delivery confirmation
13 for a package;

14 5. If there is any policy of not making refunds or cancellations,
15 including any requirement that a product will not be accepted for return or refund
16 unless it is unopened and in re-sellable condition, a statement regarding this policy;
17 and

18 6. The date by which a customer is required to request a refund.

19 C. Misrepresenting, or assisting others in misrepresenting, expressly or
20 by implication, any fact material to consumers concerning any good or service,
21 such as:

22 1. That the consumer will not be charged for any good or service;

23 2. That a good or service is free, risk free, a bonus, a gift, without
24 cost, or without obligation;

25 3. That the consumer can obtain a good or service for a
26 processing, service, shipping, handling, or administrative fee with no further
27 obligation;

1 4. The purpose(s) for which the consumer’s Billing Information
2 will be used;

3 5. The date by which the consumer will incur any obligation or be
4 charged unless the consumer takes an affirmative action with respect to a Negative
5 Option Feature that is not banned under the Section of this Order entitled “Ban on
6 Certain Negative Option Sales”;

7 6. The amount that a consumer’s credit or debit card will be
8 charged and the timing of the charge(s);

9 7. The total cost to purchase, receive, or use a good or service;

10 8. Any material restrictions, limitations or conditions to purchase,
11 receive, or use the good or service;

12 9. That a transaction has been authorized by a consumer;

13 10. That a purchase is offered with a satisfaction guarantee or with
14 a money-back guarantee;

15 11. Any material aspect of the nature or terms of a refund,
16 cancellation, exchange, or repurchase policy for the good or service;

17 12. Any material aspect of the performance, efficacy, nature, or
18 central characteristics of a good or service;

19 13. That any advertisement for a good or service sold by Settling
20 Defendant is an objective source of information, such as an unaffiliated news
21 report or magazine article; and

22 14. That an endorsement is by a bona fide user of the good or
23 service and reflects the honest opinions, findings, beliefs, or experience of the
24 endorser;

25 D. Failing, in connection with the advertising, promotion, marketing,
26 offering for sale, sale, or provision of any good or service through an Affiliate
27 Program to:
28

1 1. Require each Affiliate and/or Affiliate Network to provide to
2 Settling Defendant the following identifying information:

3 a. In the case of a natural person, the Affiliate's or Affiliate
4 Network's first and last name, physical address, country, telephone number, email
5 address, and complete bank account information as to where payments are to be
6 made to that person;

7 b. In the case of a business entity, the Affiliate's or Affiliate
8 Network's name and any and all names under which it does business, state of
9 incorporation, registered agent, and the first and last name, physical address,
10 country, telephone number, and email address for at least one natural person who
11 owns, manages, or controls the Affiliate or Affiliate Network, and the complete
12 bank account information as to where payments are to be made to the Affiliate or
13 Affiliate Network;

14 c. If Settling Defendant only has access to certain Affiliates
15 through an Affiliate Network, then Settling Defendant shall contractually require
16 each Affiliate Network to obtain and maintain from those Affiliates the identifying
17 information set forth in Subsections D.1.a and D.1.b of this Section prior to the
18 Affiliate's or Affiliate Network's participation in the Settling Defendant's Affiliate
19 Program.

20 2. As a condition of doing business with any Affiliate or Affiliate
21 Network or such Affiliate or Affiliate Network's acceptance into Settling
22 Defendant's Affiliate Program: (a) provide each such Affiliate or Affiliate
23 Network a copy of this Order; (b) obtain from each such Affiliate or Affiliate
24 Network a signed and dated statement acknowledging receipt of this Order and
25 expressly agreeing to comply with this Order; and (c) clearly and conspicuously
26 disclose in writing that engaging in acts or practices prohibited by this Order will
27 result in immediate termination of any Affiliate or Affiliate Network and forfeiture
28 of all monies owed to such Affiliate or Affiliate Network; *provided, however, that*

1 if Settling Defendant only has access to certain Affiliates through an Affiliate
2 Network, then Settling Defendant shall contractually require that the Affiliate
3 Network provide the information required by this Subsection to each of those
4 Affiliates and retain proof of the same prior to any such Affiliate being used in
5 Settling Defendant's Affiliate Program; and if Settling Defendant should acquire
6 any entity that has an existing program of selling through Affiliates, the entity must
7 complete all steps in this Subsection prior to Settling Defendant's acquisition of
8 the entity.

9 3. Require that each Affiliate or Affiliate Network, prior to the
10 public use or dissemination of any marketing materials, including websites, emails,
11 and pop-ups used by any Affiliate or Affiliate Network to advertise, promote,
12 market, offer for sale, or sell any products, services, or programs through Settling
13 Defendant's Affiliate Program, provide Settling Defendant with the following
14 information: (a) copies of all materially different marketing materials to be used by
15 the Affiliate or Affiliate Network, including text, graphics, video, audio, and
16 photographs; (b) each location the Affiliate or Affiliate Network maintains, or
17 directly or indirectly controls, where the marketing materials will appear, including
18 the URL of any website; (c) for hyperlinks contained within the marketing
19 materials, each location to which a consumer will be transferred by clicking on the
20 hyperlink, including the URL of any website; and (d) the range of dates that the
21 marketing materials will be publicly used or disseminated to consumers; *provided,*
22 *however,* that if Settling Defendant only has access to certain Affiliates through an
23 Affiliate Network, then Settling Defendant shall contractually require that the
24 Affiliate Network obtain and maintain the same information set forth above from
25 each of those Affiliates who are part of Settling Defendant's Affiliate Program
26 prior to the public use or dissemination of any such marketing materials, and
27 provide proof to Settling Defendant of having obtained the same.
28

1 4. Promptly review the marketing materials specified in Section
2 II.D.3 above as necessary to ensure compliance with this Order. Settling
3 Defendant shall also promptly take steps as necessary to ensure that the marketing
4 materials provided to Settling Defendant under Section II.D.3 above are the
5 marketing materials publicly used or disseminated to consumers by the Affiliate or
6 Affiliate Network. If Settling Defendant determines that the use of any marketing
7 material does not comply with this Order, Settling Defendant shall inform the
8 Affiliate or Affiliate Network in writing that approval is denied and shall not pay
9 any amounts to the Affiliate or Affiliate Network for such marketing, including
10 any payments for leads, “click-throughs,” or sales resulting therefrom; *provided,*
11 *however,* that if Settling Defendant only has access to certain Affiliates through an
12 Affiliate Network, then Settling Defendant shall contractually require that the
13 Affiliate Network comply with the procedures set forth in this Subsection as to
14 those Affiliates.

15 5. Promptly and completely investigate any complaints that
16 Settling Defendant receives through any source to determine whether any Affiliate
17 or Affiliate Network is engaging in acts or practices prohibited by this Order,
18 either directly or through any Affiliate that is part of Settling Defendant’s Affiliate
19 Program.

20 6. Upon determining that any Affiliate or Affiliate Network has
21 engaged in, or is engaging in, acts or practices prohibited by this Order, either
22 directly or through any Affiliate that is part of Settling Defendant’s Affiliate
23 Program, immediately:

24 a. Disable any connection between the Settling Defendant’s
25 Affiliate Program and the marketing materials used by the Affiliate or Affiliate
26 Network to engage in such acts or practices prohibited by this Order;

27 b. Immediately halt the processing of any payments or
28 charges generated by the Affiliate or Affiliate Network;

1 c. Fully refund, or cause to be refunded, within five (5)
2 business days, each consumer charged by Settling Defendant whose sale originated
3 from the Affiliate or Affiliate Network on or after the date the Affiliate or Affiliate
4 Network engaged in acts or practices prohibited by this Order; and

5 d. Immediately terminate the Affiliate or Affiliate Network;
6 *provided, however*, Settling Defendant shall not be in violation of this subsection if
7 Settling Defendant fails to terminate an Affiliate Network in a case where Settling
8 Defendant's only access to an Affiliate who has engaged in acts or practices
9 prohibited by this Order is through an Affiliate Network and Settling Defendant
10 receives notice that the Affiliate Network immediately terminated the Affiliate
11 violating this Order from any Affiliate Program maintained by the Settling
12 Defendant.

13 **III.**

14 **REQUIRED DISCLOSURES RELATING TO**
15 **NEGATIVE OPTION FEATURES**

16 **IT IS FURTHER ORDERED** that Settling Defendant, Settling
17 Defendant's officers, agents, and employees, and all other persons in active concert
18 or participation with him, who receive actual notice of this Order, whether acting
19 directly or indirectly, in connection with promoting or offering for sale any good or
20 service with a Negative Option Feature, other than any good or service covered
21 under the Section of this Order entitled "Ban on Certain Negative Option Sales,"
22 are permanently restrained and enjoined from:

23 A. Obtaining Billing Information from a consumer for any transaction
24 involving a good or service that includes a Negative Option Feature, without first
25 disclosing Clearly and Conspicuously, and in Close Proximity to where a
26 consumer provides Billing Information:

27 1. The extent to which the consumer must take affirmative
28 action(s) to avoid any charges on a recurring basis;

1 2. The total cost (or range of costs) the consumer will be charged,
2 the date the initial charge will be submitted for payment, and the frequency of such
3 charges unless the consumer timely takes affirmative steps to prevent or stop such
4 charges;

5 3. The deadline(s) (by date or frequency) by which the consumer
6 must affirmatively act in order to stop all recurring charges;

7 4. The name of the seller or provider of the good or service and, if
8 the name of the seller or provider will not appear on billing statements, the billing
9 descriptor that will appear on such statements;

10 5. A description of the good or service;

11 6. Any charge or cost for which the consumer is responsible in
12 connection with the cancellation of an order or the return of a product; and

13 7. The simple cancellation mechanism to stop any recurring
14 Charges, as required by Section V of this Order.

15 B. Failing to send the consumer:

16 1. Immediately after the consumer's submission of an online
17 order, written confirmation of the transaction by email. The email must Clearly
18 and Conspicuously disclose all the information required by Subsection III.A, and
19 contain a subject line reading "Order Confirmation" along with the name of the
20 good or service and no additional information; or

21 2. Within two (2) days after receipt of the consumer's order by
22 mail or telephone, a written confirmation of the transaction, either by email or first
23 class mail. The email or letter must Clearly and Conspicuously disclose all the
24 information required by Subsection III.A. The subject line of the email must
25 Clearly and Conspicuously state "Order Confirmation" along with the name of the
26 good or service and nothing else. The outside of the envelope must Clearly and
27 Conspicuously state "Order Confirmation" along with the name of the good or
28

1 service and no additional information other than the consumer's address, the
2 seller's return address, and postage.

3 **IV.**

4 **OBTAINING EXPRESS INFORMED CONSENT**

5 **IT IS FURTHER ORDERED** that Settling Defendant, Settling
6 Defendant's officers, agents, and employees, and all other persons in active concert
7 or participation with him, who receive actual notice of this Order, whether acting
8 directly or indirectly, in connection with promoting or offering for sale any good or
9 service with a Negative Option Feature, other than any good or service covered
10 under the Section of this Order entitled "Ban on Certain Negative Option Sales,"
11 are permanently restrained and enjoined from using, or assisting others in using,
12 Billing Information to obtain payment from a consumer, unless Settling Defendant
13 first obtains the express informed consent of the consumer to do so. To obtain
14 express informed consent, Settling Defendant must:

15 A. For all written offers (including over the Internet or other web-based
16 applications or services), obtain consent through a check box, signature, or other
17 substantially similar method, which the consumer must affirmatively select or sign
18 to accept the Negative Option Feature, and no other portion of the offer. Settling
19 Defendant shall disclose Clearly and Conspicuously, and in Close Proximity to
20 such check box, signature, or substantially similar method of affirmative consent,
21 only the following, with no additional information:

22 1. The extent to which the consumer must take affirmative
23 action(s) to avoid any charges on a recurring basis;

24 2. The total cost (or range of costs) the consumer will be charged
25 and, if applicable, the frequency of such charges unless the consumer timely takes
26 affirmative steps to prevent or stop such charges; and

27 3. The deadline(s) (by date or frequency) by which the consumer
28 must affirmatively act in order to stop all recurring charges.

1 B. For all oral offers, prior to obtaining any Billing Information from the
2 consumer:

3 1. Clearly and Conspicuously disclose the information contained
4 in Subsection IV.A; and

5 2. Obtain affirmative unambiguous express oral confirmation that
6 the consumer: (a) consents to being charged for any good or service, including
7 providing, at a minimum, the last four (4) digits of the consumer's account number
8 to be charged, (b) understands that the transaction includes a Negative Option
9 Feature, and (c) understands the specific affirmative steps the consumer must take
10 to prevent or stop further charges.

11 C. For transactions conducted through Telemarketing, Settling Defendant
12 shall maintain for three (3) years from the date of each transaction an unedited
13 voice recording of the entire transaction, including the prescribed statements set
14 out in Subsection IV.B. Each recording must be retrievable by date and by the
15 consumer's name, telephone number, or Billing Information, and must be provided
16 upon request to the consumer, the consumer's bank, or any law enforcement entity.

17 **V.**

18 **SIMPLE MECHANISM TO CANCEL**
19 **NEGATIVE OPTION FEATURE**

20 **IT IS FURTHER ORDERED** that Settling Defendant, Settling
21 Defendant's officers, agents, and employees, and all other persons in active
22 concert or participation with him, who receive actual notice of this Order, whether
23 acting directly or indirectly, in connection with promoting or offering for sale any
24 good or service with a Negative Option Feature, other than any good or service
25 covered under the Section of this Order entitled "Ban on Certain Negative Option
26 Sales," are permanently restrained and enjoined from failing to provide a simple
27 mechanism for the consumer to immediately stop any recurring charges. Such
28 mechanism must not be difficult, costly, confusing, or time consuming, and must

1 be at least as simple as the mechanism the consumer used to initiate the charge(s).

2 In addition:

3 A. For consumers who entered into the agreement to purchase a good or
4 service including a Negative Option Feature over the Internet or through other
5 web-based applications or services, Settling Defendant must provide a mechanism,
6 accessible over the Internet or through such other web-based application or service
7 that consumers can easily use to cancel the good or service and to immediately
8 stop all further charges.

9 B. For consumers who entered into the agreement to purchase a good or
10 service including a Negative Option Feature through an oral offer and acceptance,
11 Settling Defendant must maintain a telephone number and a postal address that
12 consumers can easily use to cancel the good or service and to immediately stop all
13 further charges. Settling Defendant must assure that all calls to this telephone
14 number shall be answered during normal business hours and that mail to the postal
15 address is retrieved regularly.

16 **VI.**

17 **PROHIBITIONS AGAINST VIOLATION OF THE ELECTRONIC**
18 **FUND TRANSFER ACT**

19 **IT IS FURTHER ORDERED** that Settling Defendant and Settling
20 Defendant's officers, agents, and employees, and all other persons in active concert
21 or participation with him, who receive actual notice of this Order, whether acting
22 directly or indirectly, in connection with the sale of any good or service are hereby
23 permanently restrained and enjoined from:

24 A. Engaging in any recurring debiting of a consumer's account without
25 first obtaining a valid written pre-authorization for Preauthorized Electronic Fund
26 Transfers from the consumer's account, which pre-authorization is clear and
27 readily understandable, identifiable as a pre-authorization, and reflects the
28 consumer's assent, as required by Section 907(a) of the Electronic Fund Transfer

1 Act, 15 U.S.C. § 1693e(a), and Section 1005.10(b) of Regulation E, as more fully
2 set out in Section 1005.10(b) of the Consumer Financial Protection Bureau’s
3 Official Staff Commentary to Regulation E (“Official Staff Commentary to
4 Regulation E”), 12 C.F.R. § 1005.10(b), cmts. 5 and 6, Supp. I;

5 B. Engaging in any recurring debiting of a consumer’s account without
6 first providing a copy of a valid written pre-authorization to the consumer for
7 Preauthorized Electronic Fund Transfers from the consumer’s account, which copy
8 is clear and readily understandable, identifiable as a pre-authorization, and reflects
9 the consumer’s assent, as required by Section 907(a) of EFTA, 15 U.S.C.
10 § 1693e(a), and Section 1005.10(b) of Regulation E, as more fully set out in
11 Section 1005.10(b) of the Official Staff Commentary to Regulation E, 12 C.F.R.
12 § 1005.10(b), cmts. 5 and 6, Supp. I; and

13 C. Failing to maintain procedures reasonably adapted to avoid an
14 unintentional failure to obtain a written authorization for Preauthorized Electronic
15 Fund Transfers, as required in Section 1005.10(b) of the Official Staff
16 Commentary to Regulation E, 12 C.F.R. § 1005.10(b), cmt. 7, Supp. I.

17 VII.

18 PROHIBITIONS RELATED TO MERCHANT ACCOUNTS

19 **IT IS FURTHER ORDERED** that Settling Defendant, Settling
20 Defendant’s officers, agents, and employees, and all other persons in active concert
21 or participation with him, who receive actual notice of this Order, whether acting
22 directly or indirectly, are permanently restrained and enjoined from:

23 A. Failing to disclose to any bank, payment processor, credit card
24 processor, independent sales organization, third party processor, payment gateway,
25 or other financial institution any material fact relating to obtaining a Merchant
26 Account, including, but not limited to, the identity of the owner, manager, director,
27 or officer of an entity applying for or holding a Merchant Account, and whether
28 such owner, manager, director, or officer:

1 **IX.**

2 **MONETARY JUDGMENT AND PARTIAL SUSPENSION**

3 **IT IS FURTHER ORDERED** that:

4 A. Judgment in the amount of forty-seven million three hundred
5 thousand dollars (\$47,300,000) is entered in favor of the Commission against
6 Settling Defendant as equitable monetary relief, which may include restitution.
7 Upon complete payment and transfer to the Commission of all Assets listed in
8 Subsections IX.B-C below, the remainder of the judgment is suspended, subject to
9 Subsections IX.D-F below.

10 B. In partial satisfaction of the monetary judgment set forth above,
11 within seven (7) days after the entry of this Order, the following transfers of Assets
12 shall be made to the Commission by electronic fund transfer in accordance with
13 instructions provided by a representative of the Commission. Settling Defendant
14 relinquishes all legal and equitable right, title, control, and interest in these Assets
15 and shall take all steps necessary to transfer possession, custody, and control of the
16 Assets to the Commission:

17 1. Apple Federal Credit Union shall transfer to the Commission all
18 Assets held in the bank account ending in account number 7424 in the name of
19 David Barnett.

20 2. JPMorgan Chase Bank, N.A. shall transfer to the Commission
21 all Assets held in the following bank accounts:

22 a. The bank account ending in account number 7207 in the
23 name of David Barnett; and

24 b. The bank account ending in account number 8812 in the
25 name of Absolutely, LLC.

26 3. Wells Fargo Bank, N.A. shall transfer to the Commission all
27 Assets held in the following bank accounts:

28

1 a. The bank account ending in account number 8670 in the
2 name of David Barnett;

3 b. The bank account ending in account number 0281 in the
4 name of DataFlow LLC; and

5 c. The bank account ending in account number 0307 in the
6 name of Sure Science, LLC.

7 4. The Vanguard Group, Inc. shall transfer to the Commission all
8 Assets held in the accounts ending in account numbers 9257 and 9076 in the name
9 of David Barnett.

10 C. In partial satisfaction of the monetary judgment set forth above,
11 within seven (7) days after the entry of this Order, the following transfers of Assets
12 shall be made to the Receiver, to the extent not already transferred to the Receiver,
13 and such Assets shall be included within the Receivership Estate. Settling
14 Defendant relinquishes all legal and equitable right, title, control, and interest in
15 these Assets and shall take all steps necessary to transfer possession, custody, and
16 control of the Assets to the Receiver:

17 1. JPMorgan Chase Bank, N.A. shall transfer to the Receiver all
18 Assets held in the name of or for the benefit of any of the Receivership Entities,
19 including the Assets held in the bank account ending in account number 6081 in
20 the name of Omni Holding Company, LLC.

21 2. Settling Defendant shall transfer to the Receiver all of his rights
22 and interests in Cinsay Inc., as identified in his December 10, 2018 Financial
23 Statement and supplemented on March 11, 2019, including attachments.

24 3. Settling Defendant shall transfer to the Receiver his 2018 Audi
25 SQ5, as identified in his December 10, 2018 Financial Statement and
26 supplemented on March 11, 2019, including attachments.

1 B. The facts alleged in the Complaint will be taken as true, without
2 further proof, in any subsequent civil litigation by or on behalf of the Commission
3 to enforce its rights to any payment or monetary judgment pursuant to this Order,
4 such as a nondischargeability complaint in any bankruptcy case.

5 C. The facts alleged in the Complaint establish all elements necessary to
6 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
7 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
8 estoppel effect for such purposes.

9 D. Settling Defendant acknowledges that his Taxpayer Identification
10 Number (Social Security Number), which Settling Defendant previously submitted
11 to the Commission, may be used for collecting and reporting on any delinquent
12 amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

13 E. All money paid to the Commission pursuant to this Order may be
14 deposited into a fund administered by the Commission or its designee to be used
15 for equitable relief, including consumer redress and any attendant expenses for the
16 administration of any redress fund. If a representative of the Commission decides
17 that direct redress to consumers is wholly or partially impracticable or money
18 remains after redress is completed, the Commission may apply any remaining
19 money for such other equitable relief (including consumer information remedies)
20 as it determines to be reasonably related to Settling Defendant's practices alleged
21 in the Complaint. Any money not used for such equitable relief is to be deposited
22 to the U.S. Treasury as disgorgement. Settling Defendant has no right to challenge
23 any actions the Commission or its representatives may take pursuant to this
24 Subsection.

25 F. The freeze on the Assets of the Settling Defendant pursuant to Section
26 VI of the Preliminary Injunction entered in this action on December 18, 2018 is
27 modified to permit the payments and other transfers of Assets identified in
28 Sections IX and X of this Order. Upon completion of all payment and other

1 obligations identified in Sections IX and X of this Order, the asset freeze is
2 dissolved as to the Settling Defendant. A financial institution shall be entitled to
3 rely upon a letter from the Commission stating that the freeze on the Settling
4 Defendant's Assets has been lifted.

5 **XI.**

6 **CUSTOMER INFORMATION**

7 **IT IS FURTHER ORDERED** that Settling Defendant and Settling
8 Defendant's officers, agents, and employees, and all other persons in active concert
9 or participation with him, who receive actual notice of this Order, whether acting
10 directly or indirectly, are hereby permanently restrained and enjoined from directly
11 or indirectly:

12 A. failing to provide sufficient customer information to enable the
13 Commission to efficiently administer consumer redress. If a representative of the
14 Commission requests in writing any information related to redress, Settling
15 Defendant must provide it, in the form prescribed by the Commission, within 14
16 days;

17 B. disclosing, using, or benefitting from customer information, including
18 the name, address, telephone number, email address, social security number, other
19 identifying information, or any data that enables access to a customer's account
20 (including a credit card, bank account, or other financial account), that Settling
21 Defendant obtained prior to entry of this Order in connection with the promoting or
22 offering for sale of any good or service with a Negative Option Feature; and

23 C. failing to destroy such customer information in all forms in their
24 possession, custody, or control within 30 days after receipt of written direction to
25 do so from a representative of the Commission.

26 *Provided, however,* that customer information need not be disposed of, and
27 may be disclosed, to the extent requested by a government agency or required by
28 law, regulation, or court order.

1 **XII.**

2 **COOPERATION**

3 **IT IS FURTHER ORDERED** that Settling Defendant must fully cooperate
4 with representatives of the Commission in this case and in any investigation related
5 to or associated with the transactions or the occurrences that are the subject of the
6 Complaint. Such Settling Defendant must provide truthful and complete
7 information, evidence, and testimony. Settling Defendant must appear for
8 interviews, discovery, hearings, trials, and any other proceedings that a
9 Commission representative may reasonably request upon 5 days written notice, or
10 other reasonable notice, at such places and times as a Commission representative
11 may designate, without the service of a subpoena.

12 **XIII.**

13 **TERMINATION OF RECEIVERSHIP**

14 **IT IS FURTHER ORDERED** that the Receivership imposed by this Court
15 shall continue in the manner set forth in the preliminary injunctions entered in this
16 matter as to Defendants [Dkt. Nos. 40 and 41] except as modified by this Section.

17 A. The Receiver shall take all necessary steps to wind down the affairs of
18 the Receivership Entities. Within fourteen (14) days of entry of this Order, the
19 Receiver shall transfer five hundred thousand dollars (\$500,000) of the
20 Receivership Entities' assets currently maintained in the Receiver's account to the
21 Commission.

22 B. The Receiver shall promptly take all steps necessary to liquidate the
23 assets of the Receivership Entities and, after such liquidation, shall remit the net
24 proceeds to the Commission or its designated representative as payment toward the
25 monetary judgments entered against Defendants within twenty-one (21) days of
26 each such sale or liquidation.

27 C. The Receiver and his representatives shall continue to be entitled to
28 reasonable compensation for the performance of their duties pursuant to this Order

1 from the assets of the Receivership Entities. The Receiver and his representatives
2 shall not increase their hourly rates without prior approval of the Court.

3 D. The Receiver shall file his final report describing his activities with
4 respect to the Receivership Entities and final application for compensation and
5 expenses within six (6) months after entry of this Order, unless this time is
6 extended by the Court for good cause. Upon approval of the Receiver's final
7 report and application for compensation, the Receivership shall be terminated and
8 all funds after payment of the Receiver's final approved payment shall be remitted
9 immediately to the Commission or its designated representative in partial
10 satisfaction of the monetary judgments entered against Defendants.

11 **XIV.**

12 **ORDER ACKNOWLEDGMENTS**

13 **IT IS FURTHER ORDERED** that Settling Defendant obtain
14 acknowledgments of receipt of this Order:

15 A. Settling Defendant, within 7 days of entry of this Order, must submit
16 to the Commission an acknowledgment of receipt of this Order sworn under
17 penalty of perjury.

18 B. For 5 years after entry of this Order, Settling Defendant for any
19 business that he is the majority owner or controls directly or indirectly must deliver
20 a copy of this Order to: (1) all principals, officers, directors, and LLC managers
21 and members; (2) all employees having managerial responsibilities for conduct
22 related to the subject matter of the Order and all agents and representatives who
23 participate in conduct related to the subject matter of the Order; and (3) any
24 business entity resulting from any change in structure as set forth in the Section
25 titled Compliance Reporting. Delivery must occur within 7 days of entry of this
26 Order for current personnel. For all others, delivery must occur before they
27 assume their responsibilities.
28

1 C. From each individual or entity to which Settling Defendant delivered
2 a copy of this Order, Settling Defendant must obtain, within 30 days, a signed and
3 dated acknowledgment of receipt of this Order.

4 **XV.**

5 **COMPLIANCE REPORTING**

6 **IT IS FURTHER ORDERED** that Settling Defendant makes timely
7 submissions to the Commission:

8 A. One year after entry of this Order, Settling Defendant must submit a
9 compliance report, sworn under penalty of perjury:

10 1. Settling Defendant must: (a) identify the primary physical,
11 postal, and email address and telephone number, as designated points of contact,
12 which representatives of the Commission may use to communicate with Settling
13 Defendant; (b) identify all of that Settling Defendant's businesses by all of their
14 names, telephone numbers, and physical, postal, email, and Internet addresses; (c)
15 describe the activities of each business, including the goods and services offered,
16 the means of advertising, marketing, and sales, and the involvement of any other
17 Defendant (which Settling Defendant must describe if he knows or should know
18 due to his own involvement); (d) describe in detail whether and how Settling
19 Defendant is in compliance with each Section of this Order; and (e) provide a copy
20 of each Order Acknowledgment obtained pursuant to this Order, unless previously
21 submitted to the Commission.

22 2. Additionally, Settling Defendant must: (a) identify all
23 telephone numbers and all physical, postal, email and Internet addresses, including
24 all residences; (b) identify all business activities, including any business for which
25 he performs services whether as an employee or otherwise and any entity in which
26 he has any ownership interest; and (c) describe in detail his involvement in each
27 such business, including title, role, responsibilities, participation, authority, control,
28 and any ownership.

1 B. For 15 years after entry of this Order, Settling Defendant must submit
2 a compliance notice, sworn under penalty of perjury, within 14 days of any change
3 in the following:

4 1. Settling Defendant must report any change in: (a) any
5 designated point of contact; or (b) the structure of any entity that Settling
6 Defendant has any ownership interest in or controls directly or indirectly that may
7 affect compliance obligations arising under this Order, including: creation,
8 merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that
9 engages in any acts or practices subject to this Order.

10 2. Additionally, Settling Defendant must report any change in: (a)
11 name, including aliases or fictitious name, or residence address, or (b) title or role
12 in any business activity, including any business for which he performs services
13 whether as an employee or otherwise and any entity in which he has any ownership
14 interest, and identify the name, physical address, and any Internet address of the
15 business or entity.

16 C. Settling Defendant must submit to the Commission notice of the filing
17 of any bankruptcy petition, insolvency proceeding, or similar proceeding by or
18 against him within 14 days of its filing.

19 D. Any submission to the Commission required by this Order to be
20 sworn under penalty of perjury must be true and accurate and comply with 28
21 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
22 the laws of the United States of America that the foregoing is true and correct.
23 Executed on: _____” and supplying the date, signatory’s full name, title (if
24 applicable), and signature.

25 E. Unless otherwise directed by a Commission representative in writing,
26 all submissions to the Commission pursuant to this Order must be emailed to
27 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
28 Associate Director for Enforcement, Bureau of Consumer Protection, Federal

1 Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The
2 subject line must begin: *FTC v. Apex Capital Group, LLC, et al.*

3 **XVI.**

4 **RECORDKEEPING**

5 **IT IS FURTHER ORDERED** that Settling Defendant must create certain
6 records for 15 years after entry of the Order, and retain each such record for 5
7 years. Specifically, Settling Defendant for any business that he is a majority owner
8 or controls directly or indirectly, must create and retain the following records:

9 A. accounting records showing the revenues from all goods or services
10 sold;

11 B. personnel records showing, for each person providing services,
12 whether as an employee or otherwise, that person's: name; addresses; telephone
13 numbers; job title or position; dates of service; and (if applicable) the reason for
14 termination;

15 C. records of all consumer complaints and refund requests, whether
16 received directly or indirectly, such as through a third party, and any response;

17 D. all records necessary to demonstrate full compliance with each
18 provision of this Order, including all submissions to the Commission; and

19 E. a copy of each unique advertisement or other marketing material.

20 **XVII.**

21 **COMPLIANCE MONITORING**

22 **IT IS FURTHER ORDERED** that, for the purpose of monitoring Settling
23 Defendant's compliance with this Order, including the financial representations
24 upon which part of the judgment was suspended and any failure to transfer any
25 Assets as required by this Order:

26 A. Within 14 days of receipt of a written request from a representative of
27 the Commission, Settling Defendant must: submit additional compliance reports
28 or other requested information, which must be sworn under penalty of perjury;

1 appear for depositions; and produce documents for inspection and copying. The
2 Commission is also authorized to obtain discovery, without further leave of court,
3 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
4 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

5 B. For matters concerning this Order, the Commission is authorized to
6 communicate directly with Settling Defendant. Settling Defendant must permit
7 representatives of the Commission to interview any employee or other person
8 affiliated with Settling Defendant who has agreed to such an interview. The
9 person interviewed may have counsel present.

10 C. The Commission may use all other lawful means, including posing,
11 through its representatives as consumers, suppliers, or other individuals or entities,
12 to Settling Defendant or any individual or entity affiliated with Settling Defendant,
13 without the necessity of identification or prior notice. Nothing in this Order limits
14 the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20
15 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

16 D. Upon written request from a representative of the Commission, any
17 consumer reporting agency must furnish consumer reports concerning Settling
18 Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C.
19 § 1681b(a)(1).

20 **XVIII.**

21 **RETENTION OF JURISDICTION**

22 **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this
23 matter for purposes of construction, modification, and enforcement of this Order.

24
25 **SO ORDERED** this 11th day of September, 2019.

26
27 
28 _____
JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

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For Plaintiff Federal Trade Commission:

Dated: 9/6/19

_____/s/_____
BRIAN N. LASKY
LAURA A. ZUCKERWISE
DARREN LUBETZKY
Federal Trade Commission
One Bowling Green, Suite 318
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FAYE CHEN BARNOUW
Federal Trade Commission
10990 Wilshire Blvd., Suite 400
Los Angeles, CA 90024
(310) 824-4300
(310) 824-4380 (Fax)

For Defendant David Barnett

Dated: 8/4/19

_____/s/_____
CRAIG DUFORD
DuFord Law
3611 Fifth Avenue
San Diego, CA 92103
(619) 546-4291
Craig@DufordLaw.com

Defendant David Barnett

Dated: 8/15/19

_____/s/_____
DAVID BARNETT

EXHIBIT 1
Wyoming Related Companies

<i>Company</i>
Alpha Group LLC
Apres Vous Media, LLC
Based Capital LLC
Bold Media LLC
Capstone Capital, LLC
Cascade Canyon LLC
Confidential Holdings, LLC
Cornice Group LLC
Crest Capital, LLC
Fortune Ventures LLC
Future Holdings LLC
Grand Assets, LLC
Horizon Media, LLC
Interzoom, LLC
Lead Blast LLC
Lion Capital LLC
Macro Group LLC
Mountain Range Ventures LLC
Mountain Solutions, LLC
Nutra First LLC
Nutra Global LLC
Old West Equity LLC
Omega Assets LLC
Rendezvous IT, LLC
Shadow Peak, LLC
Singletrack Solutions LLC
Sky Media Group, LLC
Teton Pass LLC
Virtual Media LLC
Wonder Leads LLC
Wyoming Freedom Group LLC
Zoom Media LLC

EXHIBIT 2
UK Related Companies

<i>Company</i>
Ace Media Group Ltd
Alpha Corporate Ventures Ltd
Apres Vous Media Ltd
Based Capital Ltd
Capstone Capital Solutions Ltd
Clik Trix Ltd
Crest Capital Ventures Ltd
Digital X Solutions Ltd
Exclusive Media Group Ltd
Empire Partners Ltd
Energy Tomorrow Ltd
Fortune Ventures Ltd
Future Hold Ventures Ltd
Future Precision Ltd
G Force Max Ltd
Grand Assets Ventures Ltd
Horizon Media Partners Ltd
Interzoom Capital Ltd
Lead Blast Ltd
Lion Capital Solutions Ltd
Maverick Pro Ltd
Mountain Venture Solutions Ltd
New Idea Group Ltd
Nutra First Ltd
Nutra Global Ltd
Omega Assets Ltd
Online Product Group Ltd
Precision Tactic Group Ltd
Rendezvous IT Ltd
Sky Blue Media Ltd
Snowdrift Solutions Ltd
Tactic Solutions Ltd
Top Quality Group Ltd
Virtual Media Solutions Ltd
Visitron Capital Ltd
Web Media Depot Ltd
Zoom Media Ltd