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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
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11 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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

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

STIPULATED FINAL ORDER

BY FAX Page 1 ORIGINAL

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

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

7 **FINDINGS**

8 1. This Court has jurisdiction over the subject matter of  
9 this case and jurisdiction over Defendant Commerce Planet.

10 Venue in the Central District of California is proper.

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

14 3. The activities of Defendant 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 waives

18 a. all rights to seek review or otherwise challenge or  
19 contest the validity of this Order;

20 b. any claim Defendant may have against the Commission,  
21 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. The Defendant 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 does  
3 not admit any of the allegations set forth in the Complaint,  
4 other than jurisdictional facts.

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

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

9 **DEFINITIONS**

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

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

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

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

26 3. "**Defendant**," unless otherwise specified, means  
27 Commerce Planet, Inc., a Utah corporation located at  
28 400 Continental Blvd., Suite 600, El Segundo,

1 California 90245, including all divisions,  
2 subsidiaries, affiliates, partnerships and joint  
3 ventures, and their successors and assigns.

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

1 I. PROHIBITION ON MISREPRESENTATIONS

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

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

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

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

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

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

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

6 **II. REQUIRED DISCLOSURES**

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

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

- 18 1. all fees and costs;
- 19 2. all material restrictions, limitations, or  
20 conditions applicable to the purchase, receipt,  
21 or use of the product, program or service that is  
22 the subject of the offer (including any promotion  
23 associated with free products or services, or  
24 products or services available on a trial basis);
- 25 3. all material terms and conditions of any offer  
26 with a negative option feature, including but not  
27 limited to
- 28 a. the dollar amount of the first payment and

1 when it will be charged, withdrawn, or  
2 become due; the dates or frequency (e.g.,  
3 monthly, quarterly) of all subsequent  
4 charges or payments; and the dollar amount  
5 or range of costs of all subsequent charges  
6 or payments;

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

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

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



1 absence of any obligation.

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

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

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

1 that includes clear and conspicuous disclosure of all  
2 the information required by Subsection A of this  
3 Section and of the procedures by which the consumer  
4 can cancel or obtain a refund.

5 **III. EXPRESS INFORMED CONSENT**

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

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

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

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

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

1 and the Commission.

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

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

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

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

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

1 **V. MONETARY RELIEF**

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

9 A. Defendant shall pay to the FTC the sume of one hundred  
10 thousand dollars (\$100,000) in equitable monetary  
11 relief, including, but not limited to, consumer  
12 redress or disgorgement, within 10 business days of  
13 the entry of this Order;

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

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

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

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

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

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

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

7 **VI. RIGHT TO REOPEN**

8 **IT IS FURTHER ORDERED** that the Commission's agreement to,  
9 and the Court's approval of, this Order are expressly premised  
10 on the truthfulness, accuracy and completeness of Defendant's  
11 financial statement (with attachments) dated June 5, 2008 and  
12 consolidated balance sheets dated October 31, 2008. If, upon  
13 motion by the Commission, the Court finds that the financial  
14 statement of Defendant contains any material misrepresentation  
15 or omission, the suspended judgment entered in Section V, above,  
16 shall become immediately due and payable, less any amounts  
17 turned over to the Commission pursuant to Section V, above, plus  
18 interest from the date of entry of this Order as allowed by law;  
19 *provided, however,* that in all other respects this Order shall  
20 remain in full force and effect unless otherwise ordered by the  
21 Court; and, *provided further,* that proceedings instituted under  
22 this provision would be in addition to, and not in lieu of, any  
23 other civil or criminal remedies as may be provided by law,  
24 including any other proceedings that the Commission may initiate  
25 to enforce this Order. For purposes of this Section VI,  
26 Defendant waives any right to contest any of the allegations in  
27 the Complaint.

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

2           **IT IS FURTHER ORDERED** that Defendant, directly or through  
3 any partnership, corporation, subsidiary, division or other  
4 device, and their officers, agents, servants, employees,  
5 attorneys, and all persons or entities in active concert or  
6 participation with them who receive actual notice of this Order  
7 by personal service or otherwise, in connection with the  
8 advertising, promoting, offering for sale, or sale of any  
9 product, program or service, are hereby permanently restrained  
10 and enjoined from failing to take all reasonable steps sufficient  
11 to monitor and ensure that all Defendant's agents,  
12 representatives, employees, independent contractors, and contract  
13 telemarketers comply with the requirements of this Order. Such  
14 reasonable steps shall 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 compliance  
25           with this Section, as required by Section X, including  
26           but not limited to, copies of all procedures for  
27           receiving and responding to consumer complaints, all  
28           documents relating to investigations of consumer



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

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

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

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

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

11 **IX. COMPLIANCE MONITORING**

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

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

26 B. In addition, the Commission is authorized to use all  
27 other lawful means, including but not limited to  
28 1. obtaining discovery from any person, without

1 further leave of court, using the procedures  
2 prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36,  
3 45 and 69; and

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

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

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

21 **X. COMPLIANCE REPORTING BY DEFENDANT**

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

24 A. For a period of five (5) years from the date of entry  
25 of this Order, Defendant shall notify the Commission of  
26 any changes in its structure or in the structure of any  
27 business entity that Defendant directly or indirectly  
28 controls, or has an ownership interest in, that may

1 affect compliance obligations arising under this Order,  
2 including but not limited to incorporation or other  
3 organization; a dissolution, assignment, sale, merger,  
4 or other action; the creation or dissolution of a  
5 subsidiary, parent, or affiliate that engages in any  
6 acts or practices subject to this Order; or a change in  
7 the business name or address, at least thirty (30) days  
8 prior to such change; *provided* that, with respect to  
9 any proposed change in the business entity about which  
10 Defendant learns less than thirty (30) days prior to  
11 the date such action is to take place, Defendant shall  
12 notify the Commission as soon as is practicable after  
13 obtaining such knowledge.

14 B. One hundred eighty (180) days after the date of entry  
15 of this Order and annually thereafter for a period of  
16 five (5) years, Defendant shall provide a written  
17 report to the Commission, which is true and accurate  
18 and sworn to under penalty of perjury, setting forth in  
19 detail the manner and form in which they have complied  
20 and are complying with this Order. This report shall  
21 include, but not be limited to

- 22 1. a copy of each acknowledgment of receipt of this  
23 Order obtained pursuant to Section XII; and
- 24 2. any other changes required to be reported under  
25 subparagraph A of this Section;

26 C. Defendant shall notify the Commission of the filing of  
27 a bankruptcy petition by such Defendant within fifteen  
28 (15) days of filing;

1 D. For the purposes of this Order, Defendant shall, unless  
2 otherwise directed by the Commission's authorized  
3 representatives, send by overnight courier all reports  
4 and notifications required by this Order to the  
5 Commission to the following address:

6 Associate Director for Enforcement  
7 Federal Trade Commission  
8 600 Pennsylvania Avenue, N.W., Room NJ-2122  
9 Washington, D.C. 20580  
10 RE: *FTC v. Commerce Planet, Inc.*;

11 *Provided that, in lieu of overnight courier, Defendant*  
12 *may send such reports or notifications by first-class*  
13 *mail, but only if Defendant contemporaneously sends an*  
14 *electronic version of such report or notification to*  
15 *the Commission at DEBrief@ftc.gov; and*

16 E. For purposes of the compliance reporting and monitoring  
17 required by this Order, the Commission is authorized to  
18 communicate directly with Defendant.

19 **XI. RECORD KEEPING PROVISIONS**

20 **IT IS FURTHER ORDERED** that, for a period of eight (8) years  
21 from the date of entry of this Order, in connection with the  
22 advertising, promoting, offering for sale, or sale of any  
23 product, program or service where Defendant engages in recurring  
24 billing of consumers, Defendant, directly or through any  
25 partnership, corporation, subsidiary, division or other device,  
26 and their officers, agents, servants, employees, attorneys, and  
27 all persons or entities in active concert or participation with  
28 Defendant who receive actual notice of this Order by personal  
service or otherwise, are hereby restrained and enjoined from  
failing to create and retain the following records:

- 1 A. Accounting records that reflect the cost of products or  
2 services sold, revenues generated, and the disbursement  
3 of such revenues;
- 4 B. Personnel records accurately reflecting: the name,  
5 address, and telephone number of each person employed  
6 in any capacity by such business, including as an  
7 independent contractor; that person's job title or  
8 position; the date upon which the person commenced  
9 work; and the date and reason for the person's  
10 termination, if applicable;
- 11 C. Customer files containing the names, addresses, phone  
12 numbers, dollar amounts paid, quantity of items or  
13 services purchased, and description of items or  
14 services purchased, to the extent such information is  
15 obtained in the ordinary course of business;
- 16 D. Complaints and refund requests (whether received  
17 directly, indirectly or through any third party) and  
18 any responses to those complaints or requests;
- 19 E. Copies of all sales scripts, training materials,  
20 advertisements, or other marketing materials; and
- 21 F. All records and documents necessary to demonstrate full  
22 compliance with each provision of this Order, including  
23 but not limited to, copies of all procedures for  
24 receiving and responding to consumer complaints, all  
25 documents relating to investigations of consumer  
26 complaints, and all documents demonstrating how each  
27 consumer complaint was responded to or addressed,  
28 required by Section VII; acknowledgments of receipt of

1 this Order, required by Sections XI and XII; and all  
2 reports submitted to the Commission pursuant to Section  
3 X.

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

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

8 A. Defendant must deliver a copy of this Order to (1) all  
9 of its principals, officers, directors, and managers;  
10 (2) all of its employees, agents, and representatives  
11 who engage in conduct related to the subject matter of  
12 the Order; and (3) any business entity resulting from  
13 any change in structure set forth in Subsection A of  
14 the Section entitled "Compliance Reporting by  
15 Defendant." For current personnel, delivery shall be  
16 within five (5) days of service of this Order upon  
17 Defendant. For new personnel, delivery shall occur  
18 prior to them assuming their responsibilities. For any  
19 business entity resulting from any change in structure  
20 set forth in Subsection A of the Section entitled  
21 "Compliance Reporting by Defendant," delivery shall be  
22 at least ten (10) days prior to the change in  
23 structure.

24 B. Defendant must secure a signed and dated statement  
25 acknowledging receipt of the Order, within thirty (30)  
26 days of delivery, from all persons receiving a copy of  
27 the Order pursuant to this Section.

28 **XIII. COOPERATION WITH FTC COUNSEL**

1 IT IS FURTHER ORDERED that Defendant shall, in connection  
 2 with this action or any subsequent investigations related to or  
 3 associated with the transactions or the occurrences that are the  
 4 subject of the FTC's Complaint, cooperate in good faith with the  
 5 FTC and appear, or cause its officers, employees,  
 6 representatives, or agents to appear, at such places and times as  
 7 the FTC shall reasonably request, after written notice, for  
 8 interviews, conferences, pretrial discovery, review of documents,  
 9 and for such other matters as may be reasonably requested by the  
 10 FTC. If requested in writing by the FTC, Defendant shall appear,  
 11 or cause its officers, employees, representatives, or agents to  
 12 appear, and provide truthful testimony in any trial, deposition,  
 13 or other proceeding related to or associated with the  
 14 transactions or the occurrences that are the subject of the  
 15 Complaint, without the service of a subpoena.

16 XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

17 IT IS FURTHER ORDERED that Defendant, within five (5)  
 18 business days of receipt of this Order as entered by the Court,  
 19 must submit to the Commission a truthful sworn statement  
 20 acknowledging receipt of this Order.

21 XV. RETENTION OF JURISDICTION

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

25 STIPULATED AND AGREED TO BY:

26  
 27 *Anthony G. Roth*

28 COMMERCE PLANET, INC., Defendant  
 Anthony G. Roth



1 Director  
30 South La Patera Lane, Suite 8  
2 Goleta, California 93117

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*David M. Newman*

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