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

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

PROMENADE COMMUNICATIONS LLC, et al.,

Defendants.

CV-04-6657 SVW

STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND MONETARY
SETTLEMENT

FMOx

Plaintiff, the Federal Trade Commission ("Commission"), has filed its complaint for permanent injunction and other relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer

1 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 *et seq.*, and the
2 Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. §§ 1693-1693r, charging Defendants with
3 violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the Commission’s Telemarketing Sales
4 Rule (“TSR”), 16 C.F.R. Part 310; and Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and
5 Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).
6

7 Plaintiff Federal Trade Commission and Defendants Promenade Communications LLC (a
8 California corporation), Promenade Membership Services LLC, Promenade Communications
9 LLC (a Florida corporation), Archetype Communications Corporation, Privco LLC, International
10 Health Group LLC, Travelquest International LLC, Global Media Holdings LTD, and Grail
11 Holdings have agreed to the entry of this Stipulated Final Judgment and Order for Permanent
12 Injunction and Monetary Settlement (“Order”) by this Court to resolve all matters of dispute
13 between the Commission and Defendants with respect to the conduct alleged in the complaint in
14 this action. As consideration for not being named as defendants in this action, the Related
15 Parties, Michael Reinstein and Brian Kelly, have agreed to the entry of this Order by this Court to
16 resolve all matters of dispute between the Commission and the Related Parties with respect to
17 conduct alleged in the Complaint.
18
19

20 **NOW, THEREFORE**, Plaintiff Federal Trade Commission, Defendants and Related
21 Parties having requested the Court to enter this Order,
22

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

24 **FINDINGS**

- 25 1. This Court has jurisdiction of the subject matter of this action and has jurisdiction over
26 Defendants. The Related Parties, although not named as defendants in this action,
27

1 consent to the jurisdiction of this Court for purposes of entry of this Order and agree to be
2 bound by the terms herein.

3 2. Venue for this action is proper in the Central District of California.

4 3. The activities of Defendants and the Related Parties are in or affecting commerce, as
5 defined in the FTC Act, 15 U.S.C. § 44.

6 4. The Complaint states a claim upon which relief may be granted against Defendants under
7 Sections 5(a), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b) and 57b; the
8 Telemarketing Act, 15 U.S.C. §§ 6101 *et seq.*, the TSR, 16 C.F.R. Part 310; and EFTA,
9 15 U.S.C. §§ 1693-1693r.

10 5. Defendants and Related Parties waive all rights that may arise under the Equal Access to
11 Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64
12 (1996). Defendants and Related Parties also waive all rights to seek judicial review of, or
13 otherwise challenge or contest the validity of, this Order. Defendants also waive service
14 of a summons.

15 6. The Commission, Defendants, and the Related Parties stipulate and agree to this Order,
16 without trial or final adjudication of any issue of fact or law, to settle and resolve all
17 matters in dispute arising from the Complaint to the date of entry of this Order.

18 Defendants and the Related Parties do not admit any of the allegations set forth in the
19 Complaint, other than jurisdictional facts.

20 7. Entry of this Order is in the public interest.
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DEFINITIONS

1. “Defendants” means Promenade Communications LLC (a California corporation), Promenade Membership Services LLC, Promenade Communications LLC (a Florida corporation), Archetype Communications Corporation, Privco LLC, International Health Group LLC, Travelquest International LLC, Global Media Holdings LTD, and Grail Holdings, and their successors and assigns.
2. “Related Parties” means Michael Reinstein and Brian Kelly.
3. “Assisting others” means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing marketing services of any kind for any person or entity, or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system (such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card); or causing any charges to be made to such an account or utilizing such a system.
4. “Billing information” means any data that enables any person to access a consumer’s account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

- 1 5. "Charge" means any amount charged or debited to a consumer's credit card, checking,
2 savings, share or similar account, utility bill, telephone bill, mortgage loan account or
3 debit card, or any similar form of collecting money from a consumer.
4
- 5 6. "Inbound" telemarketing call means a telemarketing call initiated by a consumer to a
6 telemarketer.
- 7 7. "Membership service" means any arrangement whereby persons who purportedly agree to
8 the arrangement (often called "members") receive specified benefits over a period of
9 time, including but not limited to, travel benefits, health benefits, home protection, credit
10 card protection, legal services and discounts on goods and services.
11
- 12 8. "Negative option feature" means, in an offer or agreement to sell or provide any goods or
13 services, a provision under which the consumer's silence or failure to take an affirmative
14 action to reject goods or services or to cancel the agreement is interpreted by the seller as
15 acceptance of the offer. Agreements with negative option features include, but are not
16 limited to: (i) free-to-pay conversion agreements in which the consumer receives a
17 product or service for free for an initial period and will incur an obligation to pay for the
18 product or service if he or she does not take affirmative action to cancel before the end of
19 that period; (ii) continuity plans, in which, subsequent to the consumer's agreement to the
20 plan, the seller or provider automatically ships goods to a consumer unless the consumer
21 notifies the seller or provider within a certain time not to ship the goods; and (iii)
22 automatic renewal plans, in which the seller automatically renews the agreement and
23 charges the consumer unless the consumer cancels before the renewal.
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- 25 9. "Outbound" telemarketing call means a telemarketing call initiated by a telemarketer.
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1 10. "Preacquired account information" means any information that enables a seller or
2 telemarketer to cause a charge to be placed against a consumer's account without
3 obtaining the account number directly from the consumer during the telemarketing
4 transaction pursuant to which the account will be charged.
5

6 11. "Telemarketing" means any business activity (which includes, but is not limited to,
7 initiating or receiving telephone calls, managing others who initiate or receive telephone
8 calls, operating an enterprise that initiates or receives telephone calls, owning an
9 enterprise that initiates or receives telephone calls, or otherwise participating as an
10 officer, director, employee or independent contractor in an enterprise that initiates or
11 receives telephone calls) that involves attempts to induce consumers to purchase any
12 item, good, service, partnership interest, trust interest or other beneficial interest, or to
13 enter a contest for a prize, by means of telephone sales presentations, either exclusively or
14 in conjunction with the use of other forms of marketing; **provided, however,** that the
15 term "telemarketing" does not include transactions that are not completed until after a
16 face-to-face contact between the seller or solicitor and the consumers solicited; **provided**
17 **further,** that for the purposes of Part III of this Order, the definition of telemarketing will
18 conform to that of 16 C.F.R. § 310.2.
19

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21
22 12. "Upselling" means soliciting the purchase of goods or services following an initial
23 transaction during a single telephone call. The upsell is a separate telemarketing
24 transaction, not a continuation of the initial transaction. An "external upsell" is a
25 solicitation made by or on behalf of a seller different from the seller in the initial
26 transaction, regardless of whether the initial transaction and the subsequent solicitation
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1 are made by the same telemarketer. An "internal upsell" is a solicitation made by or on
2 behalf of the same seller as in the initial transaction, regardless of whether the initial
3 transaction and subsequent solicitation are made by the same telemarketer.
4

5 **I.**

6 **PROHIBITED BUSINESS PRACTICES**

7 **IT IS THEREFORE ORDERED** that Defendants, Related Parties, and their officers,
8 agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those
9 persons or entities in active concert or participation with them who receive actual notice of this
10 Order by personal service or otherwise, whether acting directly or through any entity,
11 corporation, subsidiary, division, or other device, in connection with the advertising, promoting,
12 marketing, offering for sale, sale, or distribution of any membership service or the telemarketing
13 of any goods or services in or affecting commerce, are hereby permanently restrained and
14 enjoined from:
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17 A. Misrepresenting, expressly or by implication, any material fact, including but not
18 limited to:

19 1. that a good or service is offered at "no obligation" or words of similar
20 import, denoting or implying the absence of any obligation on the part of the recipient of
21 the offer to affirmatively act in order to avoid charges if, in fact, a charge will be
22 submitted for payment at the end of a trial period unless the consumer takes affirmative
23 action to cancel;

24
25 2. (i) the amount that a consumer will be charged or billed for any goods or
26 services, (ii) that a consumer will not be charged or billed for any goods or services, (iii)
27

1 the timing or manner of any charge or bill, or (iv) that a consumer will not be charged or
2 billed without the consumer's authorization;

3 3. the length of any trial period in any membership service that consumers
4 will receive before they are automatically charged or billed for such membership service;

5 4. the terms and conditions of Defendants' or Related Parties' policies and
6 practices regarding cancellations and refunds, including but not limited to, that (i)
7 consumers who accept Defendants' or Related Parties' offer of a membership can easily
8 cancel within the trial period and avoid charges, and (ii) consumers will be able to obtain
9 prompt refunds of fees paid to Defendants or Related Parties; and
10

11 5. the purpose for which the Defendants or Related Parties will use a
12 consumer's billing information;
13

14 B. Failing to disclose clearly and conspicuously that a purpose of a telemarketing call
15 is to sell goods or services, promptly, at the beginning of all inbound telemarketing calls in
16 response to any advertisement, promotion or other solicitation that does not clearly and
17 conspicuously disclose the sales purpose of the solicitation.
18

19 **II.**

20 **PROHIBITED BUSINESS PRACTICES REGARDING SUBMISSION OF BILLING**
21 **INFORMATION WITHOUT EXPRESS INFORMED CONSENT**

22 **IT IS FURTHER ORDERED** that Defendants, Related Parties, and their officers,
23 agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those
24 persons or entities in active concert or participation with them who receive actual notice of this
25 Order by personal service or otherwise, whether acting directly or through any entity,
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1 corporation, subsidiary, division, or other device, in connection with the telemarketing of any
2 goods or services in or affecting commerce, are hereby permanently restrained and enjoined from
3 directly or indirectly causing billing information to be submitted for payment without the express
4 informed consent of the consumer, which shall include express informed consent to be charged
5 for the goods or services and to be charged using a specified billing account. **Provided,**
6 **however,** that the following requirements must be met to evidence express informed consent:
7

8 A. Defendants and Related Parties must clearly and conspicuously disclose,
9 before the consumer consents to any purchase, all material conditions, limitations and restrictions
10 to purchase, receive, or use the goods or services that are subject to the offer (including any
11 promoted associated “free” goods or services), including but not limited to the following:
12

13 1. the dollar amount of the first payment and when it will be charged or
14 become due; the dates or frequency (*e.g.*, monthly, quarterly) of all subsequent charges or
15 payment(s); and the dollar amount or range of costs of all subsequent charges or
16 payments;
17

18 2. if a charge will be submitted for payment at the end of a trial period unless
19 the consumer cancels: this fact; the length of the trial period; the specific steps in which a
20 cancellation request must be submitted; and the date or time period by which a
21 cancellation request must be received to avoid a charge; and
22

23 3. if the seller automatically ships goods to a consumer or automatically
24 renews a membership, subscription or agreement for goods or services that is offered on a
25 periodic basis, unless the consumer notifies the seller within a certain time not to ship or
26 renew: this fact; the length of the subsequent renewal period; the manner in which a
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1 notice not to ship or renew must be submitted; the date or time period by which a notice
2 not to ship or renew must be received to avoid shipment or renewal (*e.g.*, two weeks after
3 consumer advised of an upcoming shipment); and either a telephone number or address to
4 which such a notice may be directed; and
5

6 B. In connection with the telemarketing of any goods or services pursuant to an offer
7 or agreement with a negative option feature:

8 1. Defendants and Related Parties must obtain the consumer's express
9 written agreement to purchase the goods or services and authorization to submit a charge
10 on a specified billing account for payment, that includes: (1) all of the information
11 required to be disclosed pursuant to Part IIA of this Order, and (2) the consumer's
12 signature (the term "signature" includes a verifiable electronic or digital form of
13 signature, to the extent such form of signature is recognized as a valid signature under
14 applicable federal law or state contract law); or
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16

17 2. Defendants and Related Parties must obtain the consumer's express oral
18 authorization to purchase the goods or services that are the subject of the telemarketing
19 transaction and the consumer's authorization to submit a charge on a specified billing
20 account for payment that is audio-recorded, as follows:

21 a. in connection with any telemarketing transaction involving
22 preacquired account information and a negative option feature, the
23 recording must evidence that Defendants or Related Parties have
24 obtained from the consumer, during that transaction, at a
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1 minimum, the last four (4) digits of the account number to be
2 charged; and

3 b. the recording must evidence that Defendants or Related Parties
4 have complied with Part IIA of this Order and the disclosure
5 requirements of the Telemarketing Sales Rule;

6 c. the recording must include the entirety of the transaction;

7 d. the recording can be identified and located by either the
8 consumer's name or telephone number; and

9 e. a copy of the recording is provided upon request to the consumer,
10 the consumer's bank, credit card company or other billing entity,
11 state attorney general or consumer protection agency and the
12 Commission.
13

14 III.

15 VIOLATIONS OF TELEMARKETING SALES RULE

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17 **IT IS FURTHER ORDERED** that Defendants, Related Parties, and their officers,
18 agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those
19 persons or entities in active concert or participation with them who receive actual notice of this
20 Order by personal service or otherwise, whether acting directly or through any entity,
21 corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined
22 from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect
23 now or as it may be amended.
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IV.

PROHIBITION ON RENEWALS OF CURRENT OR PAST MEMBERSHIPS

IT IS FURTHER ORDERED that Defendants, Related Parties, and their officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from causing any charges to be made or any payments to be billed to a consumer, or causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer, for any renewal of any membership services offered or provided to consumers by any Defendant or Related Party or by any entity owned or controlled directly or indirectly by any Defendant or Related Party, where the purported authorization of the membership service occurred prior to the effective date of this Order, without first obtaining from the consumer, within sixty (60) days prior to the date on which the consumer is charged or billed for such renewal, express informed consent for such renewal that complies with the requirements of Part II this Order; **provided, however,** that prior to sending any written materials to consumers to obtain the express informed consent required by this Part IV, Defendants and Related Parties shall obtain written approval for such material from counsel for the Commission.

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V.

VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT

IT IS FURTHER ORDERED that Defendants, Related Parties, and their officers, agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those

1 persons or entities in active concert or participation with them who receive actual notice of this
2 Order by personal service or otherwise, whether acting directly or through any entity,
3 corporation, subsidiary, division or other device, are hereby permanently restrained and enjoined
4 from:
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6 A. in connection with any consumer who is enrolled into any plan or program with a
7 negative option feature subsequent to the date of this Order and who uses a debit card or other
8 means of electronic funds transfer,

9
10 i. failing to obtain written authorization for Preauthorized Electronic Fund
11 Transfers from a consumer's account before initiating any Preauthorized
12 Electronic Fund Transfer, as required by Section 907(a) of the Electronic
13 Funds Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of
14 Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section
15 205.10 of the Federal Reserve Board's Official Staff Commentary to
16 Regulation E, 12 C.F.R. § 205, Supp. I, or as they may hereafter be
17 amended; and
18

19 ii. failing to maintain procedures reasonably adapted to avoid an
20 unintentional failure to obtain written authorization for a Preauthorized
21 Electronic Fund Transfer, as required in Section 205.10 of the Federal
22 Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. §
23 205, Supp. I, or as they may hereafter be amended; and
24

25 B. in connection with any consumer who was enrolled into any plan or program with
26 a negative option feature prior to the date of this Order and who indicated the use of a credit card
27

1 when in fact a debit card was used, if Defendants or Related Parties later find that the card used
2 is a debit card, failing to obtain written authorization for Preauthorized Electronic Fund Transfers
3 from the consumer's account as soon as reasonably possible, or ceasing to debit the consumer's
4 account, as required by Section 907(a) of the Electronic Funds Transfer Act, 15 U.S.C. §
5 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in
6 Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12
7 C.F.R. § 205, Supp. I, or as they may hereafter be amended.

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10 **VI.**

11 **HONORING REFUND PROMISES**

12 **IT IS FURTHER ORDERED** that Defendants, Related Parties, and their officers,
13 agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those
14 persons or entities in active concert or participation with them who receive actual notice of this
15 Order by personal service or otherwise, whether acting directly or through any entity,
16 corporation, subsidiary, division, or other device, in connection with the advertising, promoting,
17 marketing, offering for sale, sale, or distribution of any membership service or the telemarketing
18 of any goods or services in or affecting commerce, are hereby permanently restrained and
19 enjoined from:
20

21 A. With respect to any good or service offered with a money-back guarantee by
22 Defendants or Related Parties, failing to provide, within seven (7) business days of a Defendant's
23 or Related Party's receipt of a refund request, a full refund of the purchase price of the good or
24 service, including any shipping costs, insurance, handling, or any other fee or charge paid by the
25 consumer; **provided, however,** that Defendants and Related Parties may set terms and conditions
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1 for such money-back guarantee (such as a time limit within which consumers must request the
2 money back, or a non-refundable shipping and handling charge) only if Defendants and Related
3 Parties have disclosed such terms and conditions, clearly and conspicuously and in close
4 proximity to the offer, and
5

6 B. Failing to honor any representations made by Defendants or Related Parties
7 regarding refunds.

8 **VII.**

9 **MAINTAINING ACCESSIBILITY TO TELEPHONE PERSONNEL**

10 **IT IS FURTHER ORDERED** that Defendants, Related Parties, and their officers,
11 agents, employees, all other persons or entities within the scope of Fed.R.Civ.P. 65, and all those
12 persons or entities in active concert or participation with them who receive actual notice of this
13 Order by personal service or otherwise, whether acting directly or through any entity,
14 corporation, subsidiary, division, or other device, are hereby permanently restrained and
15 enjoined, in connection with the advertising, promoting, marketing, offering for sale, sale, or
16 distribution of any membership service or the telemarketing of any goods or services in or
17 affecting commerce, from failing to take all reasonable steps necessary to ensure reasonable
18 consumer accessibility to personnel manning any telephone number that Defendants or Related
19 Parties provide to consumers for cancellation of trial memberships or obtaining of refunds.
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23 **VIII.**

24 **MONITORING OF EMPLOYEES & AGENTS**

25 **IT IS FURTHER ORDERED** that Defendants and Related Parties, in connection with
26 the advertising, promoting, marketing, offering for sale, sale, or distribution of any membership
27

1 service or the telemarketing of any goods or services in or affecting commerce, are hereby
2 permanently enjoined and restrained from:

- 3 A. Failing to take reasonable steps sufficient to monitor and ensure that all
4 Defendants' and Related Parties' agents, representatives, employees, independent
5 contractors and contract telemarketers comply with Parts I through VII of this
6 Order; and
7
8 B. Failing to investigate and resolve promptly any consumer complaint or request for
9 refund received by Defendants, Related Parties, their officers, agents, employees,
10 all other persons or entities within the scope of Fed.R.Civ.P. 65, and those persons
11 or entities in active concert or participation with them who receive actual notice of
12 this Order by personal service or otherwise, and to notify the consumer of the
13 resolution of the complaint or request and the reason therefore.
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16 **IX.**

17 **MONETARY RELIEF**

18 **IT IS FURTHER ORDERED** that:

- 19 A. Judgment is hereby entered against Defendants, jointly and severally, in the
20 amount of TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (\$2,400,000);
21 **provided, however,** that this judgment will be suspended (1) upon payment to the Commission
22 or its designated agent, within five (5) days of the date of entry of this judgment, the amount of
23 \$113,000, which payment must be by wire transfer pursuant to instructions provided by the
24 Commission and (2) as long as the Court makes no finding, as provided in Part X of this Order,
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1 that any Defendant materially misrepresented or omitted the nature, existence or value of any
2 asset.

3
4 B. All funds paid pursuant to this Part shall be deposited into a fund administered by
5 the Commission or its agent to be used for equitable relief, including but not limited to consumer
6 redress and any attendant expenses for the administration of any redress fund. In the event that
7 direct redress to consumers is wholly or partially impracticable or funds remain after redress is
8 completed, the Commission may apply any remaining funds for such other equitable relief
9 (including consumer information remedies) as it determines to be reasonably related to
10 Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief
11 shall be deposited to the U.S. Treasury as equitable disgorgement. Defendants and Related
12 Parties shall have no right to challenge the Commission's choice of remedies or the manner of
13 distribution.
14

15
16 C. Defendants and Related Parties acknowledge and agree that all money paid
17 pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between
18 the parties, and Defendants and Related Parties relinquish all rights, title, and interest to such
19 money. Defendants and Related Parties shall make no claim or demand for return of the funds,
20 directly or indirectly, through counsel or otherwise, and in the event of bankruptcy of any
21 Defendant or Related Party, such Defendant or Related Party acknowledges that the funds are not
22 part of the debtor's estate, nor does the estate have any claim or interest therein.
23

24 D. Defendants are hereby required, in accordance with 31 U.S.C. § 7701, to furnish
25 to the Commission their respective taxpayer identifying numbers (social security numbers or
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1 employer identification numbers), which will be used for purposes of collecting and reporting on
2 any delinquent amount arising out of such Defendant's relationship with the government

3 E. Defendants and Related Parties waive any right to contest any of the allegations in
4 the Complaint in any subsequent litigation to collect amounts due pursuant to this Order,
5 including but not limited to a nondischargeability complaint in any bankruptcy proceeding; and
6

7 F. The judgment entered pursuant to this Part IX is equitable monetary relief, solely
8 remedial in nature, and not a fine, penalty, punitive assessment or forfeiture.

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10 **X.**

11 **RIGHT TO REOPEN**

12 **IT IS FURTHER ORDERED** that:

13 A. The Commission's agreement to this Order is expressly premised on the
14 truthfulness, accuracy and completeness of the corporate financial statements submitted to the
15 Commission in December 2003 and January 2004. If, upon motion by the Commission, the
16 Court finds that the financial statement of any Defendant contains any material misrepresentation
17 or omission, the suspended judgment entered in Part IX of this Order shall become immediately
18 due and payable as to that Defendant (less any amounts turned over pursuant to Part IX.A of this
19 Order); **provided, however**, that in all other respects this Order shall remain in full force and
20 effect unless otherwise ordered by the Court;
21

22 B. The Commission's agreement not to name Related Parties as defendants in this
23 action is expressly premised on the truthfulness, accuracy and completeness of sworn individual
24 financial statements and written information relating to their role in the conduct alleged in the
25 Complaint that were submitted to the Commission in March 2004. If the Commission
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1 determines that any such financial statement or written information contains any material
2 misrepresentation or omission, the Commission may move the Court to reopen the matter to
3 name the appropriate Related Party as a defendant and request modification of this Order;
4 **provided, however,** that in all other respects this Order shall remain in full force and effect
5 unless otherwise ordered by the Court;
6

7 C. Any proceedings instituted under this Part X shall be in addition to, and not in lieu
8 of, any other civil or criminal remedies as may be provided by law, including any other
9 proceedings that the Commission may initiate to enforce this Order. For purposes of this Part X,
10 Defendants and Related Parties waive any right to contest any of the allegations in the
11 Complaint.
12

13 XI.

14 COOPERATION WITH COMMISSION COUNSEL

15 **IT IS FURTHER ORDERED** that Related Parties shall, in connection with this action
16 or any concurrent or subsequent civil investigations related to or associated with the transactions
17 or the occurrences that are the subject of the Complaint, cooperate in good faith with the
18 Commission, and appear at such places and times as the Commission reasonably requests, after
19 written notice, for interviews, conferences, pretrial discovery, review of documents, and for such
20 other matters as may be reasonably requested by the Commission. If requested in writing by the
21 Commission, Related Parties shall appear and provide truthful testimony in any civil trial,
22 deposition or other proceeding related to or associated with the transactions or the occurrences
23 that are the subject of the Complaint without the service of a civil investigative demand or
24 subpoena.
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XII.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order,

A. Defendants shall each deliver (1) a copy of this Order to all principals, officers, directors, and managers, and (2) a copy of the Summary of the Order attached as Appendix A to all employees, agents, and representatives who engage in conduct related to the subject matter of the Order.

B. Related Parties, in connection with any business where (1) such Related Party controls, directly or indirectly, the business or has a majority ownership interest, and (2) the business engages in, or assists others engaged in, the advertising, promoting, marketing, offering for sale, sale, or distribution of any membership service or the telemarketing of any goods or services, shall each deliver (1) a copy of this Order to all principals, officers, directors, and managers of that business, and (2) a copy of the Summary of the Order attached as Appendix A to all employees, agents, and representatives who engage in conduct related to the subject matter of the Order.

C. For any business where either Related Party is not a controlling person but otherwise engages in, or assists others engaged in, the advertising, promoting, marketing, offering for sale, sale, or distribution of any membership service or the telemarketing of any goods or services, such Related Party shall delivery a copy of this Order to all principals and managers of such business before engaging in such conduct.

1 D. For current personnel, delivery required by this Part XII shall be within (5) days of
2 service of this Order upon Defendants and Related Parties. For new personnel, delivery shall
3 occur prior to them assuming their responsibilities. Defendants and Related Parties must secure
4 a signed and dated statement acknowledging receipt of the Order, within thirty days of delivery,
5 from all persons receiving a copy of the Order pursuant to this Part XII.
6

7 **XIII.**

8 **RECORD-KEEPING PROVISIONS**

9 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the date of entry
10 of this Order, each Defendant, in connection with any business where such Defendant is the
11 majority owner or otherwise controls, directly or indirectly, the business, and each Related Party,
12 in connection with any business where (1) such Related Party is the majority owner or otherwise
13 controls, directly or indirectly, the business and (2) the business is engaged in or assists others
14 engaged in the advertising, promoting, marketing, offering for sale, sale, or distribution of any
15 membership service or the telemarketing of any goods or services, and their agents, employees,
16 officers, corporations, successors, and assigns, and those persons in active concert or
17 participation with them who receive actual notice of this Order by personal service or otherwise,
18 are hereby restrained and enjoined from failing to create and retain the following records:
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21 A. Accounting records that reflect the cost of goods or services sold, revenues
22 generated, and the disbursement of such revenues;
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24 B. Personnel records accurately reflecting: the name, address, and telephone number
25 of each person employed in any capacity by such business, including as an independent
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1 contractor; that person's job title or position; the date upon which the person commenced work;
2 and the date and reason for the person's termination, if applicable;

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

7 D. Complaint and refund requests (whether received directly, indirectly or through
8 any third party) and any responses to those complaints or requests;

9 E. Copies of all sales scripts, training materials, advertisements, or other marketing
10 materials, and records that accurately reflect the time periods during which such materials were
11 used and the persons and business entities that used such materials;

13 F. For each of Defendants' or Related Parties' credit or debit card merchant
14 processing accounts:

15 1. A copy of the contract providing the account;

17 2. Records that accurately reflect the name, address and telephone number of
18 the acquirer bank, and its credit card processor(s),

19 3. Copies of correspondence from VISA, MasterCard, any similar entity, and
20 any acquirer bank or credit card processor describing a finding by such entities that any
21 Defendant or Related Party has incurred excessive chargebacks on such account, or that
22 any Defendant or Related Party has engaged in any other fraud, abuse or questionable
23 activity with respect to such account;
24

1 G. Copies of any contracts providing any Defendant or Related Party with access to a
2 billing and collection system, such as a credit card, checking, savings, share or similar account,
3 utility bill, telephone bill, mortgage loan account or debit card;
4

5 H. Each tape recording of a telemarketing call made pursuant to Part II of this Order;

6 I. For each of Defendants' and Related Parties' contract telemarketers:

7 1. A copy of the contract and any amendments thereto between such contract
8 telemarketer and any Defendant or Related Party;

9 2. Records that accurately reflect the name, address and telephone number of
10 such contract telemarketer;

11 3. Records that accurately reflect all payments made to such contract
12 telemarketer by any Defendant or Related Party, all payments made to any Defendant or
13 Related Party by such contract telemarketer, the reasons for such payments, and how such
14 payments were calculated; and
15

16 4. Copies of any correspondence with Defendants' and Related Parties'
17 contract telemarketers or any person or entity that relate to complaints from consumers,
18 government entities or any other parties about the sales, billing or collection practices or
19 any questionable activities of Defendants' or Related Parties' contract telemarketers; and
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21 J. Copies of each acknowledgement of receipt of Order required to be obtained
22 pursuant to Part XII of this Order.
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XIV.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

Order may be monitored:

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

1. Each Related Party shall notify the Commission of the following:

a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in his employment status (including self-employment) within ten (10) days of the date of such change. Such notice shall include the name and address of each business that he is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of his duties and responsibilities in connection with the business;

c. Any changes in his name or use of any aliases or fictitious names; and

2. Defendants shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30)

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

5
6 B. One hundred eighty (180) days after the date of entry of this Order, each
7 Defendant and Related Party shall provide a written report to the Commission, sworn to under
8 penalty of perjury, setting forth in detail the manner and form in which they have complied and
9 are complying with this Order. This report shall include, but not be limited to:

- 10
11 1. Any changes required to be reported pursuant to subpart A above; and
12 2. A copy of each acknowledgment of receipt of this Order obtained
13 pursuant to Part XII;

14 C. For the purposes of this Order, Defendants and Related Parties shall, unless
15 otherwise directed by the Commission's authorized representatives, mail all written notifications
16 to the Commission to:

17
18 Associate Director for Enforcement
19 Federal Trade Commission
20 600 Pennsylvania Avenue, N.W.
21 Washington D.C. 20580
22 Re: FTC v. Promenade Communications, LLC, et al.

23 D. For purposes of the compliance reporting required by this Part, the Commission is
24 authorized to communicate directly with Defendants and Related Parties.
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XV.

COMPLIANCE MONITORING

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

A. Within fifteen (15) days of receipt of written notice from a representative of the Commission, Defendants and Related Parties each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such Defendant's or Related Party's possession or direct or indirect control to inspect the business operation;

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

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;

2. posing as consumers and suppliers to: Defendants, Related Parties, their employees, or any other entity managed or controlled in whole or in part by any Defendant or Related Party, without the necessity of identification or prior notice;

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

1 C. Defendants and Related Parties shall permit representatives of the Commission to
2 interview any employer, consultant, independent contractor, representative, agent, or employee
3 who has agreed to such an interview, relating in any way to any conduct subject to this Order.
4 The person interviewed may have counsel present.
5

6 **XVI**

7 **ACKNOWLEDGMENT OF RECEIPT OF ORDER**

8 **IT IS FURTHER ORDERED** that within five (5) business days after entry of this
9 Order, each Defendant and Related Party shall submit to the Commission a truthful sworn
10 statement acknowledging receipt of this Order.
11

12 **XVII**

13 **RETENTION OF JURISDICTION**

14 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter,
15 including jurisdiction over of each Related Party, for purposes of construction, modification and
16 enforcement of this Order.
17

18 **STIPULATED AND AGREED TO BY:**

19 
20 _____
21 PROMENADE COMMUNICATIONS, LLC (a California corporation), Defendant

22 
23 _____
24 PROMENADE MEMBERSHIP SERVICES, LLC, Defendant

25 
26 _____
27 PROMENADE COMMUNICATIONS, LLC (a Florida corporation), Defendant

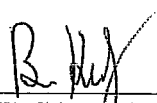
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ARCHETYPE COMMUNICATIONS CORPORATION, Defendant

IT IS SO ORDERED
Dated OCT - 7 2004

STEPHEN V. WILSON
United States District Judge

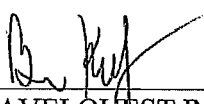
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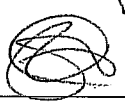
PRIVCO LLC, Defendant



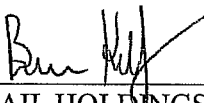
INTERNATIONAL HEALTH GROUP, LLC, Defendant



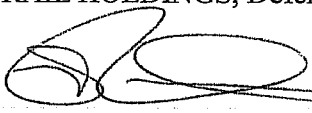
TRAVELQUEST INTERNATIONAL LLC, Defendant



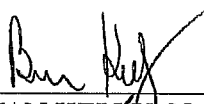
GLOBAL MEDIA HOLDINGS LTD, Defendant



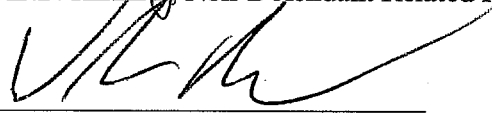
GRAIL HOLDINGS, Defendant



MICHAEL REINSTEIN, Non-Defendant Related Party



BRIAN KELLY, Non-Defendant Related Party



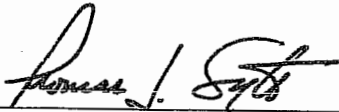
LINDA A. GOLDSTEIN

WILLIAM HEBERER

Manatt, Phelps & Phillips, LLP

Attorneys for Defendants and Related Parties

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GREGORY A. ASHE
RENAME KINSHECK
LAURA SCHNEIDER
Federal Trade Commission
Washington, D.C.

THOMAS J. SYTA
Federal Trade Commission
Los Angeles, CA

Attorneys for Plaintiff

SO ORDERED, this _____ day of _____, 2004.

UNITED STATES DISTRICT JUDGE

APPENDIX A

SUMMARY OF COURT ORDER ENTERED IN
FTC V. PROMENADE, ET AL
ON [INSERT THE DATE OF THE ORDER'S ENTRY]

DEFINITIONS

1. "Order" means the Stipulated Final Judgment and Order for Permanent Injunction and Monetary Settlement, entered on _____, 2004, in the case FTC v. Promenade Communications, LLC, et al., Case No. _____ (C.D. Cal.).

2. "Defendants" means, unless otherwise specified, Promenade Communications LLC (a California corporation), Promenade Membership Services LLC, Promenade Communications LLC (a Florida corporation), Archetype Communications Corporation, Privco LLC, International Health Group LLC, Travelquest International LLC, Global Media Holdings LTD, and Grail Holdings, and their successors and assigns.

3. "Related Parties" means Michael Reinstein and Brian Kelly

4. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) performing customer service functions for any person or entity, including, but not limited to, receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other marketing material for any person or entity; (c) performing

marketing services of any kind for any person or entity, or (d) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system (such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card); or causing any charges to be made to such an account or utilizing such a system.

5. "Billing information" means any data that enables any person to access a consumer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

6. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card, or any similar form of collecting money from a consumer.

7. "Inbound" telemarketing call means a telemarketing call initiated by a consumer to a telemarketer.

8. "Membership service" means any arrangement whereby persons who purportedly agree to the arrangement (often called "members") receive specified benefits over a period of time, including but not limited to, travel benefits, health benefits, home protection, credit card protection, legal services and discounts on goods and services.

9. "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. Agreements with negative option features include, but are not limited to: (i) free-to-pay conversion agreements in which the consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period; (ii) continuity plans, in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships goods to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the goods; and (iii) automatic renewal plans, in which the seller automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal.

10. "Outbound" telemarketing call means a telemarketing call initiated by a telemarketer.

11. "Preacquired account information" means any information that enables a seller or telemarketer to cause a charge to be placed against a consumer's account without obtaining the account number directly from the consumer during the telemarketing transaction pursuant to which the account will be charged.

12. "Telemarketing" means any business activity (which includes, but is not limited to, initiating or receiving telephone calls, managing others who initiate or receive telephone calls, operating an enterprise that initiates or receives telephone calls, owning an enterprise that initiates or receives telephone calls, or otherwise participating as an officer, director, employee or independent contractor in an enterprise that initiates or receives telephone calls) that involves attempts to induce consumers to purchase any item, good, service, partnership interest, trust interest or other beneficial interest, or to enter a contest for a prize, by means of telephone sales presentations, either exclusively or in conjunction with the use of other forms of marketing; **provided, however,** that the term "telemarketing" does not include transactions that are not completed until after a face-to-face contact between the seller or solicitor and the consumers solicited; **provided further,** that for the purposes of Part III of the Order, the definition of telemarketing will conform to that of 16 C.F.R. § 310.2.

13. "Upselling" means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a

seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

NOTE: Each of the following Order provisions applies to Defendants, Related Parties, and their officers, agents, employees, and attorneys, and all those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device. The effective date of the Order is the date the Order was entered by the Court.

**PROHIBITED BUSINESS PRACTICES
PART I OF THE ORDER**

Defendants and Related Parties are permanently restrained and enjoined from making, or causing or assisting others to make, expressly or by implication, any false or misleading representation in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any membership service or the telemarketing of any goods or services in or affecting commerce, including but not limited to:

A. Misrepresenting, expressly or by implication, any material fact, including but not limited to:

1. that a good or service is offered at "no obligation" or words of similar import, denoting or implying the

absence of any obligation on the part of the recipient of the offer to affirmatively act in order to avoid charges if, in fact, a charge will be submitted for payment at the end of a trial period unless the consumer takes affirmative action to cancel;

2. (i) the amount that a consumer will be charged or billed for any goods or services, (ii) that a consumer will not be charged or billed for any goods or services, (iii) the timing or manner of any charge or bill, or (iv) that a consumer will not be charged or billed without the consumer's authorization;

3. the length of any trial period in any membership service that consumers will receive before they are automatically charged or billed for such membership service;

4. the terms and conditions of Defendants' or Related Parties' policies and practices regarding cancellations and refunds, including but not limited to, that (i) consumers who accept Defendants' or Related Parties' offer of a membership can easily cancel within the trial period and avoid charges, and (ii) consumers will be able to obtain prompt refunds of fees paid to Defendants or Related Parties; and

5. the purpose for which the Defendants or Related Parties will use a consumer's billing information;

B. Failing to disclose clearly and conspicuously that a purpose of a telemarketing call is to sell goods or services, promptly, at the beginning of all inbound telemarketing calls in

response to any advertisement, promotion or other solicitation that does not clearly and conspicuously disclose the sales purpose of the solicitation.

**PROHIBITED BUSINESS PRACTICES REGARDING SUBMISSION OF BILLING
INFORMATION WITHOUT EXPRESS INFORMED CONSENT
PART II OF THE ORDER**

Defendants and Related Parties, in connection with the telemarketing of any goods or services in or affecting commerce, are hereby permanently restrained and enjoined from directly or indirectly causing billing information to be submitted for payment without the express informed consent of the consumer, which shall include express informed consent to be charged for the goods or services and to be charged using a specified billing account. **Provided, however,** that the following requirements must be met to evidence express informed consent:

A. Defendants and Related Parties must clearly and conspicuously disclose, before the consumer consents to any purchase, all material conditions, limitations and restrictions to purchase, receive, or use the goods or services that are subject to the offer (including any promoted associated "free" goods or services), including but not limited to the following:

1. the dollar amount of the first payment and when it will be charged or become due; the dates or frequency (e.g., monthly, quarterly) of all subsequent charges or payment(s); and the dollar amount or range of costs of all subsequent charges or

payments;

2. if a charge will be submitted for payment at the end of a trial period unless the consumer cancels: this fact; the length of the trial period; the specific steps in which a cancellation request must be submitted; and the date or time period by which a cancellation request must be received to avoid a charge; and

3. if the seller automatically ships goods to a consumer or automatically renews a membership, subscription or agreement for goods or services that is offered on a periodic basis, unless the consumer notifies the seller within a certain time not to ship or renew: this fact; the length of the subsequent renewal period; the manner in which a notice not to ship or renew must be submitted; the date or time period by which a notice not to ship or renew must be received to avoid shipment or renewal (e.g., two weeks after consumer advised of an upcoming shipment); and either a telephone number or address to which such a notice may be directed; and

B. In connection with the telemarketing of any goods or services pursuant to an offer or agreement with a negative option feature:

1. Defendants and Related Parties must obtain the consumer's express written agreement to purchase the goods or services and authorization to submit a charge on a specified

billing account for payment, that includes: (1) all of the information required to be disclosed pursuant to Part II.A of the Order, and (2) the consumer's signature (the term "signature" includes a verifiable electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable federal law or state contract law); or

2. Defendants and Related Parties must obtain the consumer's express oral authorization to purchase the goods or services that are the subject of the telemarketing transaction and the consumer's authorization to submit a charge on a specified billing account for payment that is audio-recorded, as follows:

a. in connection with any telemarketing transaction involving preacquired account information and a negative option feature, the recording must evidence that Defendants or Related Parties have obtained from the consumer, during that transaction, at a minimum, the last four (4) digits of the account number to be charged; and

b. the recording must evidence that Defendants or Related Parties have complied with Part II.A. of the Order and the disclosure requirements of the Telemarketing Sales Rule;

c. the recording must include the entirety of the transaction;

d. the recording can be identified and located

by either the consumer's name or telephone number; and

e. a copy of the recording is provided upon request to the consumer, the consumer's bank, credit card company or other billing entity, state attorney general or consumer protection agency and the Commission.

**VIOLATIONS OF TELEMARKETING SALES RULE
PART III OF THE ORDER**

Defendants and Related Parties are permanently restrained and enjoined from violating any provision of the Telemarketing Sales Rule, 16 C.F.R. Part 310, as in effect now or as it may be amended.

**PROHIBITION ON RENEWALS OF
CURRENT OR PAST MEMBERSHIPS
PART IV OF THE ORDER**

Defendants and Related Parties are permanently restrained and enjoined from causing any charges to be made or any payments to be billed to a consumer, or causing collection of, or attempts to collect, payment, directly or indirectly, from a consumer, for any renewal of any membership services offered or provided to consumers by any Defendant or Related Party or by any entity owned or controlled directly or indirectly by any Defendant or Related Party, where the purported authorization of the membership service occurred prior to the effective date of the Order, without first obtaining from the consumer, within sixty (60) days prior to the date on which the consumer is charged or billed for such renewal, express informed consent for such

renewal that complies with the requirements of Part II the Order; **provided, however,** that prior to sending any written materials to consumers to obtain the express informed consent required by this Part IV, Defendants and Related Parties shall obtain written approval for such material from counsel for the Commission.

**VIOLATIONS OF THE ELECTRONIC FUND TRANSFER ACT
PART V OF THE ORDER**

Defendants and Related Parties are hereby permanently restrained and enjoined from:

A. in connection with any consumer who is enrolled into any plan or program with a negative option feature subsequent to the date of the Order and who uses a debit card or other means of electronic funds transfer,

i. failing to obtain written authorization for Preauthorized Electronic Fund Transfers from a consumer's account before initiating any Preauthorized Electronic Fund Transfer, as required by Section 907(a) of the Electronic Funds Transfer Act, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as they may hereafter be amended; and

ii. failing to maintain procedures reasonably adapted to avoid an unintentional failure to obtain written authorization for a Preauthorized Electronic Fund Transfer, as required in

Section 205.10 of the Federal Reserve Board's Official Staff
Commentary to Regulation E, 12 C.F.R. § 205, Supp. I, or as they
may hereafter be amended; and

B. in connection with any consumer who was enrolled into
any plan or program with a negative option feature prior to the
date of the Order and who indicated the use of a credit card when
in fact a debit card was used, if Defendants or Related Parties
later find that the card used is a debit card, failing to obtain
written authorization for Preauthorized Electronic Fund Transfers
from the consumer's account as soon as reasonably possible, or
ceasing to debit the consumer's account, as required by Section
907(a) of the Electronic Funds Transfer Act, 15 U.S.C. §
1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
205.10(b), as more fully set out in Section 205.10 of the Federal
Reserve Board's Official Staff Commentary to Regulation E, 12
C.F.R. § 205, Supp. I, or as they may hereafter be amended..

**HONORING REFUND PROMISES
PART VI OF THE ORDER**

Defendants or Related Parties, in connection with the
advertising, promoting, marketing, offering for sale, sale, or
distribution of any membership service or the telemarketing of
any goods or services in or affecting commerce, are hereby
permanently restrained and enjoined from:

A. With respect to any good or service offered with a
money-back guarantee by Defendants or Related Parties, failing to

provide, within seven (7) business days of a Defendant's or Related Party's receipt of a refund request, a full refund of the purchase price of the good or service, including any shipping costs, insurance, handling, or any other fee or charge paid by the consumer; **provided, however**, that Defendants and Related Parties may set terms and conditions for such money-back guarantee (such as a time limit within which consumers must request the money back, or a non-refundable shipping and handling charge) only if Defendants and Related Parties have disclosed such terms and conditions, clearly and conspicuously and in close proximity to the offer, and

B. Failing to honor any representations made by Defendants or Related Parties regarding refunds.

**MAINTAINING ACCESSIBILITY TO TELEPHONE PERSONNEL
PART VII OF THE ORDER**

Defendants and Related Parties are permanently restrained and enjoined, in connection with the advertising, promoting, marketing, offering for sale, sale, or distribution of any membership service or the telemarketing of any goods or services in or affecting commerce, from failing to take all reasonable steps necessary to ensure reasonable consumer accessibility to personnel manning any telephone number that Defendants or Related Parties provide to consumers for cancellation of trial memberships or obtaining of refunds.

RECORD-KEEPING PROVISIONS

PART XIII OF THE ORDER

For a period of eight (8) years from the date of entry of the Order, each Defendant, in connection with any business where such Defendant is the majority owner or otherwise controls, directly or indirectly, the business, and each Related Party, in connection with any business where (1) such Related Party is the majority owner or otherwise controls, directly or indirectly, the business and (2) the business is engaged in or assists others engaged in the advertising, promoting, marketing, offering for sale, sale, or distribution of any membership service or the telemarketing of any goods or services, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the

extent such information is obtained in the ordinary course of business;

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

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, and records that accurately reflect the time periods during which such materials were used and the persons and business entities that used such materials;

F. For each of Defendants' or Related Parties' credit or debit card merchant processing accounts:

1. A copy of the contract providing the account;
2. Records that accurately reflect the name, address and telephone number of the acquirer bank, and its credit card processor(s),

3. Copies of correspondence from VISA, MasterCard, any similar entity, and any acquirer bank or credit card processor describing a finding by such entities that any Defendant or Related Party has incurred excessive chargebacks on such account, or that any Defendant or Related Party has engaged in any other fraud, abuse or questionable activity with respect to such account;

G. Copies of any contracts providing any Defendant or

Related Party with access to a billing and collection system, such as a credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account or debit card;

H. Each tape recording of a telemarketing call made pursuant to Part II of the Order;

I. For each of Defendants' and Related Parties' contract telemarketers:

1. A copy of the contract and any amendments thereto between such contract telemarketer and any Defendant or Related Party;

2. Records that accurately reflect the name, address and telephone number of such contract telemarketer;

3. Records that accurately reflect all payments made to such contract telemarketer by any Defendant or Related Party, all payments made to any Defendant or Related Party by such contract telemarketer, the reasons for such payments, and how such payments were calculated; and

4. Copies of any correspondence with Defendants' and Related Parties' contract telemarketers or any person or entity that relate to complaints from consumers, government entities or any other parties about the sales, billing or collection practices or any questionable activities of Defendants' or Related Parties' contract telemarketers; and

J. Copies of each acknowledgement of receipt of Order required to be obtained pursuant to Part XII of the Order.