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11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **UNITED STATES OF AMERICA,**

15 **Plaintiff,**

16 **v.**

17 **Member Source Media LLC, doing**  
18 **business as ConsumerGain.com,**  
19 **PremiumPerks.com,**  
20 **FreeRetailRewards.com, and**  
21 **GreatAmericanGiveaways.com,**  
**and**  
22 **Chris Sommer, individually and**  
**as Manager of Member Source**  
**Media LLC,**

23 **Defendants.**

**Case No. CV 08-642**

**STIPULATED FINAL JUDGMENT**  
**FOR CIVIL PENALTIES AND**  
**PERMANENT INJUNCTIVE**  
**RELIEF**

24 Plaintiff, the United States of America, acting upon  
25 notification and authorization to the Attorney General by the  
26 Federal Trade Commission ("FTC" or the "Commission"), pursuant to  
27 Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"),  
28 15 U.S.C. § 56(a)(1), has filed a complaint pursuant to Sections

1 5(a)(1), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act,  
2 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), 56(a), and 57b and  
3 under Section 7(a) of the Controlling the Assault of Non-  
4 Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM" or  
5 the "CAN-SPAM Act"), 15 U.S.C. § 7706(a), to secure civil  
6 penalties, a permanent injunction, and other equitable relief for  
7 Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C.  
8 § 45(a), and Section 5(a) of CAN-SPAM, 15 U.S.C. § 7704(a).

9 Defendants have waived service of the Summons and Complaint;  
10 the parties have been represented by the attorneys whose names  
11 appear hereafter; and the parties have agreed to settlement of  
12 this action upon the following terms and conditions, without  
13 adjudication of any issue of fact or law and without Defendants  
14 admitting liability for any of the matters alleged in the  
15 Complaint.

16 THEREFORE, on the joint motion of the parties, it is hereby  
17 ORDERED, ADJUDGED AND DECREED as follows:

18 **FINDINGS**

19 1. This Court has jurisdiction over the subject matter of this  
20 action pursuant to 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), 57b,  
21 and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355.

22 2. Plaintiff and Defendants consent to jurisdiction and venue  
23 in this District.

24 3. The activities of Defendants are in or affecting commerce,  
25 as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

26 4. The Complaint states a claim upon which relief may be  
27 granted against Defendants under Section 5(a) of the CAN-SPAM  
28

1 Act, 15 U.S.C. § 7704(a), and Sections 5(a), 5(m)(1)(A), 13(b)  
2 and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b),  
3 and 57b.

4 5. Defendants have entered into this Stipulated Final Judgment  
5 For Civil Penalties And Permanent Injunctive Relief ("Order")  
6 freely and without coercion.

7 6. Defendants hereby waive all rights to appeal or otherwise  
8 challenge or contest the validity of this Order.

9 7. Defendants agree that this Order does not entitle Defendants  
10 to seek or to obtain attorneys' fees as a prevailing party under  
11 the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendants  
12 further waive any rights to attorneys' fees that may arise under  
13 said provision of law.

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

15 **DEFINITIONS**

16 For the purpose of this Order, the following definitions  
17 shall apply:

18 1. "Commercial electronic mail ('email') message" means  
19 any email message the primary purpose of which is the commercial  
20 advertisement or promotion of a commercial product or service  
21 (including content on an Internet website operated for a  
22 commercial purpose) and that further satisfies the requirements  
23 of 16 C.F.R. §§ 316.1 - 316.5, as they exist now and may be  
24 amended.

25 2. Unless otherwise specified, "Defendants" means Member  
26 Source Media LLC, d/b/a ConsumerGain.com, PremiumPerks.com,  
27 FreeRetailRewards.com, and GreatAmericanGiveaways.com, Chris

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1 Sommer, and their successors and assigns.

2 3. "Document" is synonymous in meaning and equal in scope  
3 to the usage of the term in Federal Rule of Civil Procedure  
4 34(a), and includes writings, drawings, graphs, charts,  
5 photographs, audio and video recordings, computer records, and  
6 other data compilations from which information can be obtained  
7 and translated, if necessary, into reasonably usable form through  
8 detection devices. A draft or non-identical copy is a separate  
9 document within the meaning of the term.

10 4. "Electronic mail ('email') address" means a  
11 destination, commonly expressed as a string of characters,  
12 consisting of a unique user name or mailbox (commonly referred to  
13 as the "local part") and a reference to an Internet domain  
14 (commonly referred to as the "domain part"), whether or not  
15 displayed, to which an email message can be sent or delivered.

16 5. "Electronic mail ('email') message" means a message  
17 sent to a unique email address.

18 6. "Initiate," when used with respect to a commercial  
19 email message, means to originate or transmit such message or to  
20 procure the origination or transmission of such message, but  
21 shall not include actions that constitute routine conveyance of  
22 such message. For purposes of this Order, more than one person  
23 may be considered to have initiated a message.

24 7. "Landing page" means, in online marketing, a specific  
25 web page that a visitor reaches after clicking a link or  
26 advertisement in an email or banner ad. This page usually  
27 showcases content that is an extension of the link or ad.

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1 8. "Person" means a natural person or a corporation,  
2 partnership, proprietorship, limited liability company, or other  
3 organization or legal entity, including an association,  
4 cooperative, or agency, or other group or combination acting as  
5 an entity.

6 9. "Procure," when used with respect to the initiation of  
7 a commercial email message, means intentionally to pay or provide  
8 other consideration to, or induce, another person to initiate  
9 such a message on one's behalf.

10 10. "Recipient," when used with respect to a commercial  
11 email message, means an authorized user of the email address to  
12 which the message was sent or delivered. If a recipient of a  
13 commercial email message has one or more email addresses in  
14 addition to the address to which the message was sent or  
15 delivered, the recipient shall be treated as a separate recipient  
16 with respect to each such address. If an email address is  
17 reassigned to a new user, the new user shall not be treated as a  
18 recipient of any commercial email message sent or delivered to  
19 that address before it was reassigned.

20 11. "Sender," when used with respect to a commercial email  
21 message, means a person who initiates such a message and whose  
22 product, service, or Internet website is advertised or promoted  
23 by the message.

24 **ORDER**

25 **I. PROHIBITION AGAINST FAILING TO DISCLOSE MATERIAL INFORMATION**

26 IT IS THEREFORE ORDERED that Defendants, their successors,  
27 assigns, affiliates, subsidiaries, officers, agents, servants,  
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1 and employees, and those persons in active concert or  
2 participation with them who receive actual notice of this Order  
3 by personal service or otherwise are hereby permanently  
4 restrained and enjoined from:

5       A.     In any email and online advertisement, and on any  
6 landing page associated with such email or online advertisement,  
7 that contains any direct or implied representation made by  
8 Defendants, or made by any authorized agent on behalf of  
9 Defendants, that a product or service is free, failing to  
10 disclose, in the same color, font, and size, and within close  
11 proximity to such representation that a purchase is required, or  
12 that purchases are required, to obtain such product or service,  
13 when such is the case;

14       B.     On any landing page associated with any direct or  
15 implied representation made by Defendants, or made by any  
16 authorized agent on behalf of Defendants, that a product or  
17 service is free, failing to disclose, in a clear and conspicuous  
18 manner:

- 19           1.     A list of the monetary obligations a consumer is  
20                   likely to incur to obtain the advertised product  
21                   or service, when such is the case;
- 22           2.     A list of any non-monetary obligations a consumer  
23                   is likely to incur to obtain the advertised  
24                   product or service, such as having to apply and  
25                   qualify for credit cards or an automobile loan,  
26                   when such is the case.

27       The disclosures specified in subparagraphs 1 and 2 of this  
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1 Part may be made from such landing page via a hyperlink, provided  
2 that the hyperlink is labeled to convey the nature and relevance  
3 of the information to which it leads, and is clearly and  
4 conspicuously disclosed.

5 **II. PROHIBITION AGAINST VIOLATING THE CAN-SPAM ACT**

6 IT IS FURTHER ORDERED that Defendants, their successors,  
7 assigns, affiliates, subsidiaries, officers, agents, servants,  
8 and employees, and those persons in active concert or  
9 participation with them who receive actual notice of this Order  
10 by personal service or otherwise are hereby permanently  
11 restrained and enjoined from violating the CAN-SPAM Act,  
12 15 U.S.C. §§ 7701 *et seq.*, attached hereto as Attachment A, and  
13 as it may be amended, by, including, but not limited to,  
14 initiating the transmission of a commercial email message that  
15 misrepresents the content or subject matter of the message.

16 **III. CIVIL PENALTIES**

17 IT IS FURTHER ORDERED that Defendants shall pay to Plaintiff  
18 a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal  
19 Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of  
20 \$200,000 as follows:

21 A. Defendants shall make the payment required by this Part  
22 within ten (10) business days of the date of entry of this Order  
23 by electronic fund transfer or certified or cashier's check in  
24 accordance with the instructions provided by the Office of  
25 Consumer Litigation, Civil Division, U.S. Department of Justice,  
26 Washington, D.C. 20530, for appropriate disposition;

27 B. In the event of any default in payment, which default  
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1 continues for ten (10) business days beyond the due date of  
2 payment, the entire unpaid penalty, together with interest, as  
3 computed pursuant to 28 U.S.C. § 1961, from the date of default  
4 to the date of payment, shall immediately become due and payable;

5 C. This judgment represents a civil penalty owed to the  
6 United States Government and is not compensation for actual  
7 pecuniary loss. The Defendants agree that the facts as alleged  
8 in the Complaint filed in this action shall be taken as true,  
9 without further proof, in any subsequent litigation filed by or  
10 on behalf of the Commission to collect any unpaid amount or  
11 otherwise enforce its rights pursuant to this Order, including a  
12 nondischargeability complaint filed in any bankruptcy case; and

13 D. Proceedings initiated under this Part are in addition  
14 to, and not in lieu of, any other civil or criminal penalties  
15 that may be provided by law, including any other proceedings the  
16 Plaintiff may initiate to enforce this Order.

17 **IV. COMPLIANCE MONITORING**

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

20 A. Within ten (10) days of receipt of written notice from  
21 a representative of the Commission or Plaintiff, Defendants each  
22 shall submit additional written reports, sworn to under penalty  
23 of perjury; produce documents for inspection and copying; appear  
24 for deposition; and/or provide entry during normal business hours  
25 to any business location in such Defendants' possession or direct  
26 or indirect control to inspect the business operation;

27 B. In addition, the Commission and Plaintiff are  
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1 authorized to monitor compliance with this Order by all other  
2 lawful means, including but not limited to the following:

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

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

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

#### 25 **V. COMPLIANCE REPORTING BY DEFENDANTS**

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

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

3 1. Defendant Chris Sommer shall notify the Commission  
4 of the following:

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

8 b. Any changes in his employment status  
9 (including self-employment), and any change  
10 in his ownership in any business entity,  
11 within ten (10) days of the date of such  
12 change. Such notice shall include the name  
13 and address of each business that he is  
14 affiliated with, employed by, creates or  
15 forms, or performs services for; a statement  
16 of the nature of the business; and a  
17 statement of his duties and responsibilities  
18 in connection with the business or  
19 employment; and

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

22 2. Defendants shall notify the Commission of any  
23 changes in corporate structure that may affect  
24 compliance obligations arising under this Order,  
25 including but not limited to a dissolution,  
26 assignment, sale, merger, or other action that  
27 would result in the emergence of a successor  
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1           entity; the creation or dissolution of a  
2           subsidiary, parent, or affiliate that engages in  
3           any acts or practices subject to this Order; the  
4           filing of a bankruptcy petition; or a change in  
5           the corporate name or address, at least thirty  
6           (30) days prior to such change, *provided that*,  
7           with respect to any proposed change in the  
8           corporation about which Defendants learn less than  
9           thirty (30) days prior to the date such action is  
10          to take place, Defendants shall notify the  
11          Commission as soon as is practicable after  
12          obtaining such knowledge;

13          B.    One hundred eighty (180) days after the date of entry  
14 of this Order, Defendants each shall provide a written report to  
15 the FTC, sworn to under penalty of perjury, setting forth in  
16 detail the manner and form in which they have complied and are  
17 complying with this Order. This report shall include, but not be  
18 limited to:

19            1.    For Defendant Chris Sommer:

20                a.   His then-current residence address, mailing  
21                addresses, and telephone numbers;

22                b.   His then-current employment and business  
23                addresses and telephone numbers, a  
24                description of the business activities of  
25                each such employer or business, and his title  
26                and responsibilities for each such employer  
27                or business; and

1 c. Any other changes required to be reported  
2 under subparagraph A of this Section; and

3 2. For all Defendants:

4 a. A copy of each acknowledgment of receipt of  
5 this Order, obtained pursuant to Part VII.C  
6 of this Order; and

7 b. Any changes required to be reported pursuant  
8 to subsection A of this Part;

9 C. For the purposes of this Order, Defendants shall,  
10 unless otherwise directed in writing by the Commission's  
11 authorized representatives, mail all written notifications to the  
12 Commission to:

13 Associate Director for the  
14 Division of Enforcement  
15 Federal Trade Commission  
16 601 New Jersey Avenue, N.W.  
17 Washington, D.C. 20580  
18 Re: United States v. Member Source Media LLC  
19 Case No. \_\_\_\_\_;

20 D. For the purposes of this Order, Defendants shall,  
21 unless otherwise directed in writing by a representative of  
22 Plaintiff, identify all written notifications required to be sent  
23 to Plaintiff as in reference to DJ# 102-3436, and mail them to:

24 Director, Office of Consumer Litigation  
25 U.S. Department of Justice - Civil Division  
26 P.O. Box 386  
27 Washington, D.C. 20044; and

28 E. For purposes of the compliance reporting and monitoring  
required by this Order, representatives of Plaintiff and the  
Commission are authorized to communicate directly with  
Defendants.

1 **VI. RECORD KEEPING PROVISIONS**

2 IT IS FURTHER ORDERED that, for a period of eight (8) years  
3 from the date of entry of this Order, Defendants and their  
4 agents, employees, officers, corporations, successors, and  
5 assigns, and those persons in active concert or participation  
6 with them who receive actual notice of this Order by personal  
7 service or otherwise, are hereby restrained and enjoined from  
8 failing to create and retain the following records in connection  
9 with the marketing, advertising, or promotion of any "free"  
10 products or services:

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

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

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

25 D. Complaints and refund requests (whether received  
26 directly, indirectly or through any third party) and any  
27 responses to those complaints or requests; and  
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1 E. Copies of all sales scripts, training materials,  
2 advertisements, or other marketing materials;

3 F. Records demonstrating reasonable policies and  
4 procedures to process and handle customer inquiries and  
5 complaints; and

6 G. All records and documents necessary to demonstrate full  
7 compliance with each provision of this Order, including but not  
8 limited to, copies of acknowledgments of receipt of this Order  
9 required by Part VIII, and all reports submitted to the FTC  
10 pursuant to Part V of this Order.

11 **VII. DISTRIBUTION OF ORDER BY DEFENDANTS**

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

15 A. Defendant Member Source Media LLC must deliver a copy  
16 of this Order to all of its principals, officers, directors, and  
17 managers. Defendant Member Source Media LLC also must deliver  
18 copies of this Order to all of its employees, agents, and  
19 representatives who engage in conduct related to the subject  
20 matter of this Order. For current personnel, delivery shall be  
21 within (5) days of service of this Order upon Defendants. For  
22 new personnel, delivery shall occur prior to them assuming their  
23 responsibilities;

24 B. For any business that Defendant Chris Sommer controls,  
25 directly or indirectly, or in which Defendant Chris Sommer has a  
26 majority ownership interest, Defendant Chris Sommer must deliver  
27 a copy of this Order to all principals, officers, directors, and  
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1 managers of that business. Defendant Chris Sommer must also  
2 deliver copies of this Order to all employees, agents, and  
3 representatives of that business who engage in conduct related to  
4 the subject matter of this Order. For current personnel,  
5 delivery shall be within (5) days of service of this Order upon  
6 Defendants. For new personnel, delivery shall occur prior to  
7 them assuming their responsibilities; and

8 C. Defendants must secure a signed and dated statement  
9 acknowledging receipt of this Order, within thirty (30) days of  
10 delivery, from all persons receiving a copy of this Order  
11 pursuant to this Part.

12 **VIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

13 IT IS FURTHER ORDERED that each defendant, within five (5)  
14 business days of receipt of this Order as entered by the Court,  
15 must submit to the Commission a truthful sworn statement  
16 acknowledging receipt of this Order.

17 **IX. FEES AND COSTS**

18 IT IS FURTHER ORDERED that each party to this Order hereby  
19 agrees to bear its own costs and attorneys' fees incurred in  
20 connection with this action.

21 **X. SEVERABILITY**

22 IT IS FURTHER ORDERED that the provisions of this Order are  
23 separate and severable from one another. If any provision is  
24 stayed or determined to be invalid, the remaining provisions  
25 shall remain in full force and effect.

26 **XI. RETENTION OF JURISDICTION**

27 IT IS FURTHER ORDERED that this Court shall retain  
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1 jurisdiction of this matter for purposes of construction,  
2 modification, and enforcement of this Order.

3 **XII. COMPLETE SETTLEMENT**

4 The parties, by their respective counsel, hereby consent to  
5 entry of the foregoing Order, which shall constitute a final  
6 judgment and order in this matter. The parties further stipulate  
7 and agree that the entry of the foregoing Order shall constitute  
8 full, complete, and final settlement of this action.

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1 FOR THE PLAINTIFF:

2 UNITED STATES OF AMERICA:

3 JEFFREY S. BUCHOLTZ  
Acting Assistant Attorney General  
4 Civil Division  
U.S. Department of Justice

5 EUGENE M. THIROLF  
6 Director,  
KENNETH L. JOST  
7 Deputy Director,  
Office of Consumer Litigation

8 \_\_\_\_\_  
/s/  
9 JOHN W. BURKE (VA. BAR NO. 72780)  
Trial Attorney  
10 Office of Consumer Litigation  
Civil Division  
11 U.S. Department of Justice  
P.O. Box 386  
12 Washington, D.C. 20044  
Telephone: 202-353-2001  
13 Facsimile: 202-514-8742  
Email: josh.burke@usdoj.gov

14 FOR THE FEDERAL TRADE COMMISSION:

15 \_\_\_\_\_  
/s/  
16 LOIS C. GREISMAN  
Associate Director for Marketing Practices

17  
18 \_\_\_\_\_  
/s/  
19 STEPHEN L. COHEN  
ETHAN ARENSON  
20 Attorneys, Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
21 Washington, D.C. 20580

22

23

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1 FOR THE DEFENDANTS:

2

\_\_\_\_\_  
/s/

3

Jeffrey K. Riffer  
Jeffer Mangers Butler & Marmaro LLP  
1900 Avenue of the Stars, 7<sup>th</sup> Floor  
Los Angeles, CA 90067

5

6 Member Source Media LLC

BY: \_\_\_\_\_  
/s/

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204 East 2nd Avenue, Suite 517  
San Mateo, CA 94401

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\_\_\_\_\_  
/s/

10

Chris Sommer,  
Individually and as Manager of Member Source Media LLC

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**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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\_\_\_\_\_  
United States District Judge

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Stip. Final Judgment  
CV 08-642