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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 _____)
FEDERAL TRADE COMMISSION,) CV-99-13114-FMC (CWx)
12)
Plaintiff,) STIPULATED FINAL ORDER FOR
13) PERMANENT INJUNCTION AND OTHER
v.) EQUITABLE RELIEF
14)
WAZZU CORPORATION, et al.,)
15)
Defendants.)
16 _____)

17
18 Plaintiff Federal Trade Commission ("Commission") filed a
19 Complaint alleging that Wazzu Corporation ("Wazzu"), Jayme Amirie,
20 Kenneth Gharib, and Kirk Waldfogel (collectively, "Named
21 Defendants") had violated Section 5(a) of the Federal Trade
22 Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45(a). The
23 parties have agreed to settle this action by entering into this
24 Stipulated Final Order for Permanent Injunction and Other
25 Equitable Relief ("Order") without trial or adjudication of any
26 issue of law or fact and without Named Defendants admitting
27 liability for any of the matters alleged in the Complaint.

1 NOW, THEREFORE, on the joint request of the Commission and
2 Named Defendants, it is hereby ORDERED, ADJUDGED and DECREED as
3 follows:

4
5 FINDINGS

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

9 2. The Complaint states a claim upon which relief may be
10 granted against the Named Defendants under Sections 5(a)(1) and
11 13(b) of the FTC Act, 15 U.S.C. §§ 45(a)(1) and 53(b).

12 3. The Commission has the authority under Section 13(b) of
13 the FTC Act, 15 U.S.C. § 53(b), to seek the relief it has
14 requested.

15 4. The activities of the Named Defendants charged in the
16 Complaint are in or affecting commerce, as defined in Section 4 of
17 the FTC Act, 15 U.S.C. § 44.

18 5. The Named Defendants have waived any and all claims
19 under the Equal Access to Justice Act, 28 U.S.C. § 2412, as
20 amended by PL 104-121, 110 Stat. 847, 863-64 (1996).

21 6. Entry of this Order resolves all matters of dispute
22 between the Commission and the Named Defendants arising from the
23 Complaint in this action, up to the date of entry of this Order.

24 7. The parties waive all rights to seek appellate review or
25 otherwise challenge or contest the validity of this Order. The
26 Named Defendants further waive and release any claim they may have
27 against the Commission, its employees, agents, or representatives
28 arising from any event that occurred up to entry of this Order.

1 translated, if necessary, through detection devices into
2 reasonably usable form. A draft or non-identical copy is a
3 separate document within the meaning of the term;

4 F. "Material" means likely to affect a person's choice of,
5 or conduct regarding, goods or services;

6 G. "Internet" means a worldwide system of linked computer
7 networks that use a common protocol (TCP/IP) to deliver and
8 receive information. The "Internet" includes but is not limited
9 to the following forms of electronic communication: file
10 transfers, electronic mail, the World Wide Web, newsgroups,
11 Internet Relay Chat, audio, and video;

12 H. "Internet services" means any services related to
13 providing access to or advertisements on the Internet, including
14 the provision of e-mail or e-mail to fax service, or creating,
15 designing or hosting any website, webpage, or advertisements on
16 the Internet;

17 I. A "website" is a set of electronic documents, usually a
18 home page and subordinate pages, readily viewable on computer by
19 anyone with access to the Internet, standard software, and
20 knowledge of the website's location or address; and

21 J. A "webpage" is a single electronic document within a
22 website, readily viewable on computer by anyone with access to the
23 Internet, standard software, and knowledge of the webpage's or
24 website's location or address.

25 K. A "telemarketing sales vendor" means any company in the
26 business of communicating with consumers over the telephone on
27 behalf of one or more third parties for the purpose of giving
28

1 sales pitches, taking orders, or otherwise marketing, offering for
2 sale, or selling products or services for such third parties.

3 L. The term "explicit oral or written authorization" as
4 used in Section II of this Order means authorization that is
5 obtained by the consumer providing an unequivocal and affirmative
6 act of assent, such as a "yes" answer, in response to each of the
7 terms set forth in Paragraph A of Section II--i.e., method of
8 billing and the amounts to be billed, the amount of any one-time
9 charges, if any, such as a design fee, and the amount and
10 frequency of any recurring charges, such as hosting or access
11 fees--in contrast to authorization that may be inferred from a
12 consumer's silence in response to the proposed transaction or to
13 any individual term of the proposed transaction.

14 ORDER

15 **SECTION I.**

16 **REPRESENTATIONS**

17 **IT IS THEREFORE ORDERED** that Defendants, directly or through
18 any corporation, subsidiary or other entity or intermediary, in
19 connection with the promotion, advertising, marketing, sale, or
20 offering for sale of any Internet services, are hereby permanently
21 restrained and enjoined from:

22 A. Falsely representing, expressly or by implication, that
23 Defendants will not charge consumers before the end of any free
24 trial period for Internet services;

25 B. Falsely representing, expressly or by implication, that
26 Defendants will not charge consumers who cancel before the end of
27 any free trial period for Internet services;

28

1 C. Falsely representing, expressly or by implication, that
2 a consumer is legally obligated to pay charges for Internet
3 services;

4 D. Falsely representing, expressly or by implication, any
5 other material fact in connection with charges for Defendants'
6 Internet services; and

7 E. Falsely representing, expressly or by implication, any
8 other material fact.

9 **SECTION II.**

10 **BILLING**

11 **IT IS FURTHER ORDERED** that Defendants, in connection with any
12 telephone communications with a consumer in which any Internet
13 services are offered, promoted or sold, are hereby permanently
14 restrained and enjoined, directly or through any corporation,
15 subsidiary or other entity or intermediary, from sending a bill
16 for any Internet services to any consumer, or submitting payment
17 information to any third party, such as a billing agent, credit
18 card processing agent, or bank, for processing charges to a
19 consumer for any Internet services--

20 A. Prior to the expiration of any applicable free-trial
21 period. Any free-trial period offered by Wazzu pertaining to the
22 ordering of a website shall commence no earlier than five (5) days
23 after Wazzu or anyone acting on its behalf mails or otherwise
24 communicates to the consumer information sufficient to permit the
25 consumer to review the ordered website; and

26 B. Without having first obtained explicit oral or written
27 authorization from the consumer that the consumer agrees to the
28 method of billing and the amounts to be billed, including the

1 amount of any one-time charges, such as a design fee, and the
2 amount and frequency of any recurring charges, such as hosting or
3 access fees. *Provided, however,* that this Paragraph shall not be
4 construed to prohibit Defendants from--

5 (1) billing charges to a consumer's credit card account
6 number if:

7 (i) the consumer has given explicit oral or written
8 authorization to bill the charges to that credit
9 card account number; and

10 (ii) the credit card is subject to the dispute
11 resolution requirements of the Fair Credit Billing
12 Act and the Truth in Lending Act, as amended; or

13 (2) billing a consumer in any manner if the Defendants
14 have, prior to the date of billing, sent the
15 consumer a written confirmation of the transaction
16 to which the consumer agreed over the telephone
17 that includes all of the following information:

18 (i) the method of billing to be used;

19 (ii) the estimated date on which any one-time
20 charges, if any, will be billed to the
21 consumer or submitted to a third party for
22 processing, and the amount of such charges;

23 (iii) the estimated date on which the first
24 recurring charge, if any, will be billed to
25 the consumer or submitted to a third party for
26 processing, and the amount of such charges;

27 (iv) the frequency with which recurring charges, if
28 any, will be billed to the consumer or

1 submitted to a third party for processing, and
2 the amount of such charges; and

3 (v) the procedure by which the consumer can
4 dispute to Wazzu any matter included in the
5 confirmation and request a refund or credit of
6 charges to which the consumer had not agreed.

7 *Provided further* that evidence that Defendants have obtained
8 consumers' credit card numbers or sent consumers a written
9 confirmation in the manner described above will be considered but
10 shall not necessarily be conclusive in any proceeding to determine
11 whether the Defendants have violated Section I.C. of this Order.

12 **SECTION III.**

13 **CONSUMER REDRESS**

14 **IT IS FURTHER ORDERED** that Named Defendants shall engage one
15 or more independent third-parties (collectively, "Administrator"),
16 approved by the Commission's representatives, to administer a
17 redress program as described below, at Named Defendants' own
18 expense:

19 A. Within thirty (30) days following entry of this Order,
20 Named Defendants shall provide the Administrator and the
21 undersigned counsel for the Commission with an affidavit or
22 declaration that includes a list of the name and last known
23 address and telephone number, including the Billing Telephone
24 Number ("BTN"), of every consumer qualified to receive a notice
25 package, as described below. Consumers qualified to receive a
26 notice package include all consumers who either (i) were being
27 billed for Wazzu's services through a local exchange carrier
28 ("LEC") as of June 7, 1999 or (ii) have been LEC billed between

1 June 7, 1999 and the date the Named Defendants signed this Order,
2 with the exception of any consumer--

- 3 1. who has converted to credit card billing; or
- 4 2. who has converted to payment by electronic transfer
5 of funds; or
- 6 3. for whom a full credit has been transmitted
7 directly or through the LEC billing system for all
8 charges for Wazzu's Internet services; or
- 9 4. who has, after the expiration of their thirty-day
10 free trial period, engaged their website
11 administration feature; or
- 12 5. who has, after the expiration of their thirty-day
13 free trial period, engaged their e-mail address
14 selection feature.

15 Named Defendants may generate the list of qualified consumers by
16 using information in Wazzu's customer database records, provided
17 that one of the individual Defendants with personal knowledge
18 provides an affidavit or declaration that truthfully states: (i)
19 whether there is any reason to believe that the information or
20 method used may not or did not generate an accurate list of
21 consumers qualified to receive a notice package; and (ii) if
22 applicable, how and the extent to which the information or method
23 used did not or may not generate an accurate list. If a means
24 other than using information in Wazzu's customer database records
25 is used, the affidavit or declaration shall state the method that
26 was used to generate the list of qualified consumers.

27 B. Within sixty (60) days following entry of this Order,
28 the Administrator shall mail a notice package to every consumer

1 identified on the list of consumers qualified to receive a notice
2 package. The notice package, which shall have been approved in
3 advance by the Commission's representatives, shall consist of a
4 written notice, reply form, and self-addressed postage-paid return
5 envelope addressed to Wazzu at an address maintained by the
6 Administrator. The Administrator shall retain a sample of the
7 actual form letter, including the enclosures, that is sent to
8 consumers, to be provided to Commission counsel upon request, and
9 records showing the date on which the mailings were sent.

10 C. The Administrator shall keep records showing the names
11 of consumers whose notice packages are returned by the Post Office
12 as undeliverable and shall make a reasonable effort to obtain
13 valid addresses for such consumers so that the notice packages can
14 be re-mailed, including placing a call to the BTN provided by the
15 Named Defendants and asking for a current address, and using the
16 National Change of Address registry.

17 D. The Administrator shall review and evaluate consumers'
18 eligibility for redress in accordance with the criteria set forth
19 below. To the extent that a consumer's eligibility cannot be
20 determined solely from the consumer's reply form, the
21 Administrator shall call the consumer and make a follow-up attempt
22 to make the determination. A consumer shall be determined
23 eligible for redress if the consumer:

24 1. Returns a signed reply form postmarked within forty
25 (40) days following the date on which the notice package was
26 mailed to the consumer; and

27 2. Indicates on the reply form that the consumer wants
28 to cancel Wazzu's service or halt all charges; and

1 3. Provides an explanation on the reply form as to the
2 reason the consumer wants to cancel Wazzu's service; and

3 4. Indicates in either the explanation on the reply
4 form, or, if the explanation on the reply form is insufficient to
5 determine eligibility, in a subsequent statement signed under
6 penalty of perjury and provided to the Administrator, that:

7 a. one or more unauthorized charges for Wazzu's
8 services appeared on the consumer's telephone
9 bill; or

10 b. the consumer canceled within Wazzu's free
11 trial period but was nonetheless charged; or

12 c. the consumer was charged for Wazzu's services
13 even though he was told he would not be
14 charged unless he notified Wazzu after the
15 free trial period that he wanted to continue
16 with the service; or

17 d. the consumer was charged even though he never
18 received any written materials or any
19 notification that his Wazzu website was
20 available for review.

21 E. Within one hundred forty (140) days following entry of
22 this Order, the Administrator shall provide to Commission counsel
23 and to Named Defendants (i) a list of consumers that the
24 Administrator has determined to be eligible to receive redress
25 (the "preliminary eligibility list"), and (ii) copies of all reply
26 forms and other written statements received from consumers.

27 F. Named Defendants may review the preliminary eligibility
28 list and eliminate from the list the name of any consumer who has

1 already been issued a full credit or refund, provided that the
2 Named Defendants first provide Commission counsel an affidavit or
3 declaration truthfully stating that, with respect to each consumer
4 whose name the Named Defendants have removed from the preliminary
5 eligibility list, Wazzu has already (i) arranged for the
6 appropriate billing agent or service to transmit a full credit to
7 the consumer; (ii) provided a full credit or refund directly to
8 the consumer; or (iii) received information, from either a billing
9 service or a LEC, indicating that a full credit has been provided
10 to the consumer.

11 G. Named Defendants shall, within thirty (30) days
12 following receipt of the preliminary eligibility list from the
13 Administrator, take all steps necessary to (i) arrange for the
14 appropriate billing agent or service to transmit a full credit to
15 each consumer whose name was included on the preliminary
16 eligibility list and not eliminated pursuant to the preceding
17 Paragraph, or (ii) provide full credits or refunds directly to
18 such consumers. Named Defendants shall make and keep records
19 reflecting the efforts taken to effectuate the credits or refunds,
20 and shall, between thirty (30) and forty-five (45) days following
21 receipt of the list of eligible consumers from the Administrator,
22 prepare an affidavit or declaration stating the efforts taken to
23 comply with this Paragraph.

24 H. The Administrator shall, between thirty (30) and sixty
25 (60) days after providing the preliminary eligibility list to
26 Named Defendants, review the efforts taken by Named Defendants to
27 ensure that Named Defendants have taken the necessary steps to
28 comply with Paragraph G, above.

1 I. The Administrator shall, within twenty (20) business
2 days of completing the review described in Paragraph H above,
3 provide a report to the Commission and to Named Defendants
4 describing the efforts taken by the Administrator and the results
5 of its review of the Named Defendants' efforts to comply with
6 Paragraph G, above.

7 J. Named Defendants are responsible for ensuring that the
8 Administrator performs all tasks as specified in this Section.
9 Should the Administrator be unable or fail to comply with any
10 provision in this Section, Named Defendants shall make alternative
11 arrangements, subject to the approval of the Commission or its
12 representatives, for timely accomplishment of such tasks.

13 K. Within fifteen (15) business days of receiving from the
14 Administrator the report required by Paragraph I, above, the
15 Commission shall either-

16 (1) provide written notice to counsel for Named
17 Defendants, and to the Escrow Agent named in the
18 Escrow Agreement attached hereto as Attachment A
19 holding \$12,932.41 in escrow to secure payment of
20 redress under this Section, that the funds are
21 divested and may be returned to the Named
22 Defendants; or

23 (2) provide written notice to counsel for Named
24 Defendants and to the Court that the Commission is
25 moving the Court to require Named Defendants to
26 show cause why they should not be held in contempt
27 for their failure to comply with this Section.
28

1 In the event the Court finds that Named Defendants have not
2 complied with Paragraph G of this Section, funds held in escrow
3 pursuant to the Escrow Agreement set forth in Attachment A shall
4 be released to the Commission in the amount necessary to provide
5 refunds to all consumers who were to receive credits or refunds
6 pursuant to Paragraph G but who have not in fact received such
7 credits or refunds. The Commission shall then use such funds to
8 provide refunds to such consumers. Any funds remaining in escrow
9 after all eligible consumers have received full refunds shall be
10 divested and returned to the Named Defendants.

11 **SECTION IV.**

12 **RECORDKEEPING**

13 **IT IS FURTHER ORDERED** that, for a period of three (3) years
14 from the date of entry of this Order, corporate Defendant Wazzu,
15 and each individual Defendant in connection with any business
16 where the Defendant individually or jointly with any other
17 individual Defendant is the majority owner of the business or
18 directly or indirectly manages or controls the business and where
19 the business engages in the promotion, marketing, offering for
20 sale, or sale of Internet services, are hereby restrained and
21 enjoined from failing to create or maintain the following:

22 A. Books, records and accounts which, in reasonable detail,
23 accurately and fairly reflect the cost of goods or services sold,
24 and the income, disbursements, transactions and use of funds.

25 B. Records accurately reflecting the following: (i) the
26 name, address, and phone number of each person who the business
27 employs in any capacity, each person the business retains as a
28 directly hired independent contractor to conduct or assist with

1 telemarketing, each telemarketing sales vendor directly retained
2 by the business, and each telemarketing sales vendor that has been
3 retained by any third party with which the business has contracted
4 for the purpose of managing, supervising or contracting with
5 telemarketing sales vendors; and (ii) if a person, that person's
6 job title or position; (iii) the date upon which the person or
7 company commenced work; and (iv) the date and reason for the
8 person's or company's termination, if applicable. Defendants
9 shall retain such records for any terminated employee or company
10 for a period of two years following the date of termination.

11 C. Records containing the names, addresses, phone numbers,
12 and dollar amounts paid, for all consumers to whom Named
13 Defendants have sold Internet services.

14 D. Records that contain or reflect, for every written
15 consumer complaint or refund request, whether received directly or
16 indirectly or through any third party, including complaints and
17 refund requests submitted by mail, courier, fax or e-mail, and for
18 every oral consumer complaint or refund request conveyed by
19 consumers calling any telephone number provided by the business
20 for customer service inquiries:

- 21 1. The consumer's name, address, and telephone number
22 and the dollar amount paid by the consumer;
- 23 2. The written complaint or refund request, if any,
24 and the date of the complaint or refund request;
- 25 3. The basis of the complaint, including the name of
26 any salesperson complained against, and the nature
27 and result of any investigation conducted
28 concerning the validity of the complaint;

- 1 4. Each response by the business and the date of the
- 2 response;
- 3 5. Any final resolution and the date of the
- 4 resolution; and
- 5 6. In the event of a denial of a refund request, the
- 6 reason for the denial.

7 E. Copies of all (i) telemarketing sales scripts,
8 (ii) telemarketing training packets, (iii) written communications,
9 with any telemarketing sales vendor retained by the business or
10 with any third party with which the business has contracted for
11 the purpose of managing, supervising or contracting with
12 independent telemarketing sales vendors, regarding representations
13 to consumers, obtaining authorization from consumers, or
14 telemarketing sales techniques or practices, and (iv) the caller-
15 paid and/or toll-free telephone numbers utilized by the business
16 in furtherance of any telemarketing of Internet services.

17 F. All contracts and agreements with any telemarketing
18 sales vendor retained by the business or with any third party with
19 which the business has contracted for the purpose of managing,
20 supervising or contracting with independent telemarketing sales
21 vendors.

22 **IT IS FURTHER ORDERED** that all documents that are required to
23 be created or maintained under this Section shall be retained for
24 three (3) years following the date on which the document was
25 created or came into the Named Defendant's possession, custody or
26 control.

1 business, and to each third party with which the
2 business has contracted for the purpose of
3 managing, supervising or contracting with
4 telemarketing sales vendors, within ten (10)
5 business days of entry of this Order and thereafter
6 immediately upon employing or retaining any such
7 persons, and obtain a signed and dated
8 acknowledgment of receipt of same, within ten (10)
9 business days of providing the summary pursuant to
10 this Paragraph, from each person to whom it is
11 required to be distributed;

12 *Provided*, however, that the Defendants shall, upon the
13 request of any person who has received a summary
14 pursuant to this Paragraph, promptly provide such person
15 with a copy of the complete Order; and *provided further*
16 that Named Defendants shall be jointly and severally
17 liable to comply with this Paragraph, such that only one
18 copy of this Order, or a summary thereof, need be
19 distributed to any particular person.

20 B. Maintain for a period of three (3) years after creation,
21 and upon reasonable notice make available to representatives of
22 the Commission, the original signed and dated acknowledgments of
23 the receipts of copies of this Order or the summary required in
24 Paragraph A of this Section.

25 **SECTION VI.**

26 **MONITORING COMPLIANCE OF SALES PERSONNEL**

27 **IT IS FURTHER ORDERED** that corporate Defendant Wazzu, and
28 each individual Defendant in connection with any business where

1 the Defendant individually or jointly with any other individual
2 Defendant is the majority owner of the business or directly or
3 indirectly manages or controls the business and where the business
4 engages in the promotion, marketing, offering for sale, or sale of
5 Internet services, are hereby permanently restrained and enjoined
6 from:

7 A. Failing to take reasonable steps sufficient to monitor
8 and ensure that all persons and companies that engage or
9 participate in telemarketing sales, billing, or responding to
10 consumer complaints with respect to Internet services offered by
11 Wazzu or the Defendant, are complying with Sections I and II of
12 this Order. Such steps shall include, at a minimum, the
13 following: (1) refusing to honor, accept, compensate for, or bill
14 any consumer for, any sale of Internet services submitted from or
15 through any employee, any telemarketing sales vendor directly
16 retained by the business, or any other company with which the
17 business has contracted for the purpose of managing, supervising
18 or contracting with telemarketing sales vendors, that has not
19 received a copy of this Order or a summary conforming to
20 Attachment B of this Order; (2) maintaining a procedure for
21 receiving and responding to consumer complaints; and (3) for each
22 employee, telemarketing sales vendor, or third party with which
23 the business has contracted for the purpose of managing,
24 supervising or contracting with telemarketing sales vendors that
25 is implicated in a consumer complaint, ascertaining the number and
26 nature of consumer complaints regarding transactions in which the
27 employee, telemarketing sales vendor or third party is involved;

1 B. Failing promptly to investigate fully any consumer
2 complaint relating to telemarketing received by the business;

3 C. Failing to take corrective action with respect to any
4 sales person or any telemarketing sales vendor whom the Defendant
5 has reason to believe has made misrepresentations to consumers or
6 has determined is not acting in accordance with the requirements
7 of Section I of this Order, which may include training,
8 disciplining, refusing to do further business with, and/or
9 terminating such sales person or vendor, provided that this
10 Section does not authorize or require Defendants to take any steps
11 that violate any federal, state, or local laws.

12 **SECTION VII.**

13 **COMPLIANCE REPORTING BY DEFENDANTS**

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

16 A. The individual Defendants shall, for a period of three
17 (3) years from the date of entry of this Order, notify the
18 Commission of:

19 1. Any changes in the Defendant's residence, mailing
20 address, and telephone numbers, within ten (10) business days of
21 the date of such change; and

22 2. Any changes in the Defendant's employment status
23 (including self-employment) within ten (10) days of such change.
24 Such notice shall include the name and address of each business
25 that the Defendant is affiliated with or employed by, a statement
26 of the nature of the business, and a statement of the Defendant's
27 duties and responsibilities in connection with the business or
28 employment;

1 B. Named Defendants shall notify the Commission of any
2 proposed change in the structure of Wazzu, such as dissolution,
3 assignment, sale, merger, creation or dissolution of subsidiaries,
4 proposed filing of a bankruptcy petition, or change in the
5 corporate name or address, or any other change that may affect
6 compliance obligations arising out of this Order, thirty (30) days
7 prior to the effective date of any proposed change; provided,
8 however, that, with respect to any proposed change in the
9 corporation about which Named Defendants learn less than thirty
10 (30) days prior to the date such action is to take place, or that
11 is to occur less than thirty (30) days after the final decision to
12 make such change has been made, Named Defendants shall notify the
13 Commission as soon as is practicable after learning of such
14 proposed change or the final decision to make such change has been
15 made;

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

22 1. The Defendant's then current residence address and
23 telephone number;

24 2. The Defendant's then current employment, business
25 addresses and telephone numbers, a description of the business
26 activities of each such employer, and the Defendant's title and
27 responsibilities for each employer;

28

1 3. A copy of each acknowledgment of receipt of this
2 Order, and each summary thereof, obtained by Defendant pursuant to
3 Section V of this Order;

4 4. A statement describing the manner in which the
5 Defendant has complied and is complying with Sections I and II of
6 this Order;

7 D. Upon written request by a representative of the
8 Commission, Named Defendants shall submit additional written
9 reports (under oath, if requested) and produce documents on twenty
10 (20) business days' notice, or such other mutually agreed to
11 period of time, with respect to any conduct subject to this Order,
12 subject to the Defendants' right to seek a protective order from
13 the court for good cause shown;

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

18 Assistant Regional Director
19 Federal Trade Commission
20 10877 Wilshire Blvd., Suite 700
21 Los Angeles, CA 90024
22 Re: FTC v. Wazzu

23 F. For purposes of the compliance reporting required by
24 this Section, the Commission is authorized to communicate with
25 Defendants' undersigned counsel, Brobeck, Phleger & Harrison LLP,
26 unless and until the undersigned counsel advises the Commission,
27 in accordance with Paragraph E of this Section, that
28 communications regarding compliance reporting should be directed
to another specified party.

1 A. Access during normal business hours to Wazzu's offices
2 or any facility storing its documents. In providing such access,
3 Named Defendants shall permit representatives of the Commission to
4 inspect and copy all documents relevant to any matter contained in
5 this Order; and shall permit Commission representatives to remove
6 (i) non-business critical documents relevant to any matter
7 contained in this Order for a period not to exceed five (5)
8 business days, and (ii) documents deemed business critical by
9 Wazzu for a period not to exceed twenty-four (24) hours or such
10 other period as agreed to by Wazzu and the Commission's
11 representatives, so that the documents may be inspected,
12 inventoried, and copied, with all documents removed to be returned
13 to Wazzu in good order. Provided that, upon application of the
14 Commission and for good cause shown, the Court may enter an ex
15 parte order granting immediate access to Wazzu's business premises
16 for the purposes of inspecting and copying all documents relevant
17 to any matter contained in this Order.

18 B. To interview, at Wazzu's place of business or a
19 similarly convenient location, the officers, directors, and
20 employees, including all personnel involved in responding to
21 consumer complaints or inquiries, and all sales personnel, whether
22 designated as employees, consultants, independent contractors or
23 otherwise, of Wazzu concerning matters relating to compliance with
24 the terms of this Order, upon written request by a representative
25 of the Commission through Wazzu's counsel. The person interviewed
26 may have counsel present.

ESCROW AGREEMENT

WHEREAS Wazzu Corporation, Jayme Amirie, Kenneth Gharib, and Kirk Waldfogel ("Defendants") have offered to settle charges of alleged violations of the Federal Trade Commission Act by signing and agreeing to entry of the proposed Stipulated Final Order for Permanent Injunction and Other Equitable Relief ("proposed Order") attached to this Escrow Agreement as Exhibit 1, and staff of the Los Angeles office of the Western Region of the Federal Trade Commission have agreed, contingent upon the Defendants' appropriate execution of this Escrow Agreement and transfer of funds into escrow, to recommend to the Federal Trade Commission ("Commission") that it authorize staff to file the proposed Order with the United States District Court for the Central District of California ("District Court") as settlement of such charges;

WHEREAS the proposed Order provides that Defendants will issue credits or refunds to qualified consumers who appropriately complete and submit reply forms establishing they are eligible under the terms of the proposed Order for credits or refunds;

WHEREAS Defendants have agreed to pay \$12,932.41 into an escrow account not later than five (5) business days after Defendants sign the proposed Order and have agreed that such funds shall be held there pending approval of the proposed Order by the Federal Trade Commission and entry of the proposed Order by the District Court, and, in the event the proposed Order is entered by the District Court, distributed in accordance with its terms:

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements and conditions contained in this Escrow Agreement, the Defendants and FTC staff do hereby agree as follows:

1. Southern California Bank Escrow agrees to serve as the Escrow Agent. The Defendants shall transfer \$12,932.41 to the Escrow Agent, within five business days after they have signed the proposed Order, by electronic transfer or certified or cashier's check. The Escrow Agent shall hold this sum (the "Escrow Fund") in trust for consumers, for distribution in accordance with the terms of this Escrow Agreement.

2. It is understood and agreed by the parties to this Escrow Agreement that by signing this Escrow Agreement, the Defendants relinquish all dominion, control and title to the Escrow fund, and that all legal and equitable title to the Escrow fund is vested in consumers eligible to receive redress as set forth under the terms of the proposed Order; subject to being divested under the following circumstances:

- a.. in the event the proposed Order is rejected by the Commission or the District Court; or
- b. in the event the proposed Order is approved by the Commission and entered by the District Court and, pursuant to Section III of the Order, the Commission notifies the Escrow Agent and counsel for the Defendants that the Escrow fund is divested and that all monies in the Escrow fund may be returned to Defendants.

Provided that in the event that the Escrow fund is used to pay refunds to consumers pursuant to Section III.K of the Order, any funds remaining in escrow after all eligible consumers have received full refunds shall be divested and returned to the Named Defendants.

3. The Defendants agree not to make a claim to or demand for the return of the Escrow fund, directly or indirectly, unless the Escrow fund or any part thereof is divested as described in the

preceding paragraph of this Escrow Agreement. In the event of bankruptcy of any Defendant such Defendant agrees to acknowledge and verify in an appropriate manner to the bankruptcy court or to any other authority, and hereby also acknowledges and verifies, that neither the Escrow fund nor any part thereof is part of the debtor's estate, and that the estate does not have any claim or interest therein.

4. In the event the proposed Order is approved by the Commission and entered by the District Court, the Escrow Agent shall not distribute or return any portion of the Escrow fund prior to receiving either notice from the Commission that the Escrow fund is divested and that all monies in the Escrow fund may be returned to Defendants, or a copy of an order from the District Court directing the Escrow Agent to release funds to the Commission or to distribute all or any portion of the funds in any other manner. In the event the Escrow Agent receives notice from the Commission that the Escrow fund is divested and that all monies in the Escrow fund may be returned to Defendants, the Escrow Agent shall return all monies in the Escrow fund to the Defendants. In the event the Escrow Agent receives a copy of an order from the District Court regarding disposition of all or any portion of the Escrow fund, the Escrow Agent shall comply with the requirements of the order.

5. The escrow shall be irrevocable, and the Escrow fund shall be used for no purpose other than providing refunds as set forth in the Stipulated Final Order. Any interest earned on the escrow principal during the pendency of the escrow shall accrue to the Escrow fund and shall be paid out, and shall be subject to being divested, in the same manner as the principal.

1 In witness whereof, each of the parties has caused this Escrow Agreement to be executed, in
2 the case of the individually defendants, personally, and, in the case of the corporate defendant, on its
3 behalf by its duly authorized representative.

4 Dated: _____

Jayme Amirie
Individual Defendant

5 Dated: _____

Kenneth Gharib
Individual Defendant

6 Dated: _____

Kirk Waldfogel
Individual Defendant

7 Dated: _____

WAZZU CORPORATION

8 By: _____
Jayme Amirie, Chief
Executive Officer

9 Dated: _____

FEDERAL TRADE COMMISSION

10 By: _____
John D. Jacobs
Attorney for Plaintiff

11 Dated: _____

SOUTHERN CALIFORNIA
BANK ESCROW

12 By: _____
Escrow Agent

[ATTACHMENT B]

NOTICE TO SALES PERSONNEL

A federal court order, which was entered without any finding or admission of wrongdoing, prohibits Wazzu Corporation, Jayme Amirie, Kenneth Gharib and Kirk Waldfogel, and their employees, and all other persons in active concert or participation with them who receive actual notice of the following requirements, from making any misrepresentation of material fact, either expressly or by implication, orally or in writing, in connection with the promotion, advertising, marketing, offering for sale, or sale of Internet services.

The order specifically prohibits making any of the following representations, unless the representation is true at the time it is made:

- A. Consumers will not be charged before the end of any free trial period for Internet services;
- B. Consumers who cancel before the end of any free trial period for Internet services will not be charged ; and
- C. A consumer is legally obligated to pay charges for Internet services.

You must comply with these prohibitions. A copy of the court order is available upon request. The order was issued in FTC v. Wazzu Corp., CV-99-13114-FMC (CWx) (U.S. District Court, C.D. Cal.), in a case brought by the Federal Trade Commission. The order was entered without any finding or admission of wrongdoing.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

_____)	
FEDERAL TRADE COMMISSION,)	CV-99-13114-FMC (CWx)
))	
Plaintiff,)	AFFIDAVIT OF DEFENDANT [NAME]
))	AFFIRMING RECEIPT OF STIPULATED
v.)	FINAL ORDER
))	
WAZZU CORPORATION, et al.,)	
))	
Defendants.)	
_____)	

I, [name], being duly sworn, hereby states and affirms as follows:

1. My name is [name]. My current residence address is _____ . I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the facts set forth in this Affidavit.

2. I am a defendant in FTC v. Wazzu Corporation, et al., (United States District Court for the Central District of California, Western Division, CV-99-13114 FMC).

3. On [date], I received a copy of the STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF,

1 which was signed by the Honorable Florence-Marie Cooper and
2 entered by the Court on [date of entry of Order]. A true and
3 correct copy of the Order I received is appended to this
4 Affidavit.

5 I declare under penalty of perjury under the laws of the
6 United States that the foregoing is true and correct. Executed on
7 [date], at [city and state].

8

9

_____ [signature]
_____ [name]

10

11

State of _____, City of _____

12

13

Subscribed and sworn to before me
this ____ day of _____, 20__.

14

15

16

Notary Public
My Commission Expires:

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