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FEDERAL TRADE COMMISSION
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12
13 FEDERAL TRADE COMMISSION)

14 Plaintiff,)

15 v.)

16 HOLIDAY PLUS TRAVEL, LLC, a)
California company;)

17 BLAIN BURKE, individually;)

18 KEVIN M. CLARKE, individually and)
19 as an officer of HOLIDAY PLUS)
TRAVEL, LLC; and)

20 LIZETTE TEMPLETON, individually)
21 and as an officer of HOLIDAY)
PLUS TRAVEL, LLC,)

22 Defendants.)
23)
24)

CV

STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION

25 Plaintiff, the Federal Trade Commission ("FTC") has
26 commenced this action by concurrently filing its Complaint
27 and this Stipulated Final Judgment and Order for Permanent
28 Injunction ("Order"). The Complaint seeks a permanent

1 injunction and other equitable relief pursuant to Sections
2 13(b) and 19 of the Federal Trade Commission Act ("FTC
3 Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and
4 Consumer Fraud and Abuse Prevention Act ("Telemarketing
5 Act"), 15 U.S.C. §§ 6101 *et seq.*, and charges Defendants
6 Holiday Plus Travel, LLC, Blain Burke, Kevin M. Clarke, and
7 Lizette Templeton with deceptive acts and practices in
8 connection with the sale, offering for sale, or distribution
9 of vacation or travel-related products or services.

10 The Defendants have waived service of the Summons and
11 Complaint. The parties, represented by the attorneys whose
12 names appear hereafter, have agreed to the entry of this
13 Order and have requested that the Court enter the same to
14 resolve all matters in dispute in this action, without
15 admission of liability, and without trial or adjudication of
16 any issue of law or fact herein.

17 **FINDINGS**

18 1. This is an action by Plaintiff instituted under
19 Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and
20 57b, and Sections 3, 4, and 6 of the Telemarketing Act, 15
21 U.S.C. §§ 6102 & 6105. Plaintiff has the authority to seek
22 the relief contained herein, and the Complaint states a
23 claim upon which relief may be granted against Defendants
24 under Sections 5, 13(b), and 19 of the FTC Act, 15 U.S.C.
25 §§ 45, 53(b), and 57b, and the Telemarketing Sales Rule, 16
26 C.F.R. Part 310.

27 2. This Court has jurisdiction over the subject matter
28 of this case and all parties hereto. Venue in the Central

1 District of California is proper.

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

5 4. The Defendants enter into this Order freely,
6 without coercion or admission of liability for any
7 allegation or charge made in the Commission's Complaint, and
8 acknowledge that they understand the provisions of this
9 Order and are prepared to abide by them.

10 5. The parties shall each bear their own costs and
11 attorney's fees incurred in this action. The Defendants
12 have waived all claims under the Equal Access to Justice
13 Act, 28 U.S.C. § 2412, and all rights to seek judicial
14 review, or otherwise to challenge the validity of this
15 Order.

16 6. Entry of this Order is in the public interest.

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

18 **DEFINITIONS**

19 For purposes of this order, the following definition
20 shall apply:

21 1. "Telemarketing" means a plan, program, or campaign
22 which is conducted to induce the purchase of goods or
23 services by use of one or more telephones and which involves
24 more than one interstate telephone call; provided, however,
25 that "telemarketing" shall not include calls made to or from
26 consumers in connection with the performance of legal
27 services rendered by a licensed attorney.

28 2. "Travel Accommodations" means any product or

1 service, including tickets, passes, or certificates, that:
2 gives customers the right, opportunity, or license to
3 travel, such as, for example, by airplane, train,
4 automobile, or ship, or to obtain temporary lodging, such
5 as, for example, at a hotel, a motel, or campground housing.

6 3. "Named Defendants" means Holiday Plus Travel, LLC,
7 Blain Burke, Kevin M. Clarke, Lizette Templeton and their
8 successors and assigns.

9 **I. BAN ON SELLING OR MARKETING TRAVEL ACCOMMODATIONS**

10 **IT IS THEREFORE ORDERED** that Defendants and their
11 officers, agents, directors, servants, employees,
12 salespersons, independent contractors, attorneys,
13 corporations, subsidiaries, successors, assigns, and all
14 other persons or entities in active concert or participation
15 with them who receive actual notice of this Order by
16 personal service or otherwise, whether acting directly or
17 through any trust, corporation, subsidiary, division, or
18 other device, are permanently restrained and enjoined from
19 holding more than a 10% ownership interest in any business
20 entity engaged in the sale or marketing of Travel
21 Accommodations, or serving as a consultant, officer,
22 director, or trustee to any such business entity.

23 **II. BOND TO ENGAGE IN TELEMARKETING**

24 **IT IS FURTHER ORDERED** that each Defendant and their
25 officers, agents, directors, servants, employees,
26 salespersons, independent contractors, attorneys,
27 corporations, subsidiaries, successors, assigns, and all
28 other persons or entities in active concert or participation

1 with them who receive actual notice of this Order by
2 personal service or otherwise, whether acting directly or
3 through any trust, corporation, subsidiary, division, or
4 other device, are hereby permanently restrained and enjoined
5 from engaging in the telemarketing of any product or service,
6 unless at least two weeks prior to such activities the Defendant
7 obtains a performance bond in the principal sum of TWO HUNDRED
8 THOUSAND DOLLARS for each business so engaged.

9 A. This bond shall be conditioned upon said Defendant's
10 compliance with Section 5 of the Federal Trade Commission Act, 15
11 U.S.C. § 45, the Telemarketing Sales Rule, 16 C.F.R. Part 310,
12 and the provisions of this Order. The bond shall be deemed
13 continuous and remain in full force and effect until said
14 Defendant ceases to engage in the telemarketing of any product or
15 service and for at least three years thereafter. The bond shall
16 cite the FTC Act, 15 U.S.C. § 31 *et seq.*, the Telemarketing Sales
17 Rule, 16 C.F.R. Part 310, and this Order as the subject matter of
18 the bond, and shall provide surety thereunder against financial
19 loss resulting from any violation by any Defendant of Section 5
20 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, 16
21 C.F.R. Part 310, the provisions of this Order, or any other law;

22 B. The performance bond required pursuant to this Section
23 shall be an insurance agreement providing surety for financial
24 loss issued by a surety company that is admitted to do business
25 in each of the states in which said Defendant is doing business
26 and that holds a Federal Certificate of Authority As Acceptable
27 Surety On Federal Bond and Reinsuring. Each such performance
28 bond shall be in favor of both (1) the Federal Trade Commission

1 for the benefit of any consumer injured as a result of any
2 violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the
3 Telemarketing Sales Rule, 16 C.F.R. Part 310, the provisions of
4 this Order, or any other law made while engaged in the
5 telemarketing of any product or service, and (2) any consumer so
6 injured;

7 C. The bond required pursuant to this Section is in
8 addition to, and not in lieu of, any other bond required by
9 federal, state or local law;

10 D. Said Defendant shall provide a copy of the bond
11 required by this Section to the Commission at least ten days
12 before commencing the activity invoking the bond requirement of
13 this Section;

14 E. No Defendant nor his agents, servants, employees,
15 attorneys, or any person or entity directly or indirectly under
16 his control, shall disclose the existence of the performance bond
17 required by this Section to any consumer, or other purchaser or
18 prospective purchaser of any product or service that is
19 advertised, promoted, offered for sale, sold, or distributed via
20 telemarketing, without also disclosing clearly and prominently,
21 at the same time, "AS REQUIRED BY ORDER OF THE U.S. DISTRICT
22 COURT IN SETTLEMENT OF CHARGES OF FALSE AND MISLEADING
23 REPRESENTATIONS IN THE PROMOTION, SALE AND TELEMARKETING OF
24 PRODUCTS OR SERVICES";

25 F. The Commission may execute against the performance bond
26 if it demonstrates to this Court by a preponderance of the
27 evidence that, after the effective date of this Order, said
28 Defendant has, individually or through any other person or

1 entity, (1) made a misleading or false representation, directly
2 or by implication, in connection with the advertising, marketing,
3 sale or offering for sale of any service or product, in violation
4 of Section 5 of the FTC Act, 15 U.S.C. § 45, (2) violated the
5 Telemarketing Sales Rule, 16 C.F.R. Part 310, (3) violated any
6 term of this Order, or (4) failed to render any required
7 performance that results in financial loss to any consumer, in
8 connection with the advertising, marketing, offering for sale,
9 sale or distribution of any product or service while utilizing
10 telemarketing as a means of achieving the sale; and

11 G. Proceedings instituted under this Section are in
12 addition to, and not in lieu of, any other civil or criminal
13 remedies as may be provided by law, including any other
14 proceedings the Commission may initiate to enforce this Order.

15 **III. PROHIBITED BUSINESS ACTIVITIES**

16 **IT IS FURTHER ORDERED** that Defendants and their
17 officers, agents, directors, servants, employees,
18 salespersons, independent contractors, attorneys,
19 corporations, subsidiaries, successors, assigns, and all
20 other persons or entities in active concert or participation
21 with them who receive actual notice of this Order by
22 personal service or otherwise, whether acting directly or
23 through any trust, corporation, subsidiary, division, or
24 other device, are hereby enjoined from:

25 A. Falsely representing, expressly or by implication,
26 the total cost of a product or service;

27 B. Failing to clearly and conspicuously disclose any
28 material cost, restriction, limitation, or condition to

1 purchase, receive, or use any product or service before
2 consumers are asked to pay money;

3 C. Falsely representing, expressly or by implication,
4 that consumers have won or have been specially selected to
5 receive any product or service;

6 D. Failing to clearly and conspicuously disclose all
7 policies and material terms pertaining to refunds or
8 cancellations, including the fact that refunds are not
9 provided, or that cancellations are not allowed;

10 E. Failing to refund any money, including deposits,
11 paid by a consumer within 15 business days of a request to
12 do so where the consumer has satisfied the requirements
13 necessary for its return;

14 F. Falsely representing, expressly or by implication,
15 any material fact about a product or service, including, but
16 not limited to, its nature, quality, value, location, or
17 cost to upgrade;

18 G. Violating the Telemarketing Sales Rule, 16 C.F.R.
19 Part 310, as currently written or as amended, including
20 without limitation:

21 1. 16 C.F.R. § 310.3(a)(1)(i), by failing to
22 disclose, in a clear and conspicuous manner, before a
23 customer pays or authorizes payment for goods or services
24 offered, the total costs to purchase, receive, or use, and
25 the quantity of, any goods or services that are the subject
26 of the sales offer;

27 2. 16 C.F.R. § 310.3(a)(1)(ii), by failing to
28 disclose in a clear and conspicuous manner, before a

1 customer pays or authorizes payment for goods or services
2 offered, all material restrictions, limitations, or
3 conditions to purchase, receive, or use the goods or
4 services that are the subject of the sales offer;

5 3. 16 C.F. R. § 310.3(a)(2)(v), by
6 misrepresenting, expressly or by implication, any material
7 aspect of a prize promotion, including without limitation:
8 the odds of being able to receive a prize; the nature or
9 value of a prize; that a purchase or payment is required to
10 win a prize or to participate in a prize promotion; or
11 that consumers have won or been specially selected to
12 receive a vacation; and

13 4. 16 C.F.R. § 310.3(b), by providing substantial
14 assistance or support to any seller or telemarketer, when
15 Defendants know or consciously avoid knowing that the seller
16 or telemarketer, as those terms are defined in 16 C.F.R.
17 § 310.2, is engaged in any act or practice in violation of
18 the Telemarketing Rule;

19 H. Falsely representing, expressly or by implication
20 any fact material to a consumer's decision to purchase any
21 good or service; and

22 I. Doing business with any entity that does not have
23 in effect a written agreement with Defendants containing the
24 restrictions and requirements stated in Subsections (A)
25 through (H), above, in connection with the telemarketing of
26 any product or service.

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1 IV. CONSUMER REDRESS

2 IT IS ORDERED that judgment in the amount of \$20,000,
3 which shall be paid within 10 business days of entry of this
4 Order, is hereby entered in favor of the Commission, jointly
5 and severally, against Defendants for equitable monetary
6 relief, including but not limited to, consumer redress
7 and/or disgorgement, and for paying any attendant expenses
8 of administering any redress fund.

9 A. If the Commission, in its sole discretion,
10 determines that redress is wholly or partially impractical,
11 any funds not so used shall be deposited in the United
12 States Treasury. The Commission in its sole discretion may
13 use a designated agent to administer consumer redress. This
14 judgment for equitable monetary relief is solely remedial in
15 nature and is not a fine, penalty, punitive assessment, or
16 forfeiture. The Commission shall have full and sole
17 discretion to:

18 1. Determine the criteria for participation by
19 individual claimants in any consumer redress program
20 implemented pursuant to this Order;

21 2. Determine the manner and timing of any notices
22 to be given to consumers regarding the existence and terms
23 of such programs; and

24 3. Delegate any and all tasks connected with such
25 redress program to any individuals, partnerships, or
26 corporations; and pay the fees, salaries, and expenses

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1 incurred thereby from the payments made pursuant to this
2 Order;

3 B. Defendants shall provide the Commission, or its
4 agent, within thirty days of such a request, the name, last
5 known address, telephone number, date of purchase, credit
6 card or bank account information, and the complete file
7 record, including computer records and correspondence, of
8 each consumer who paid Defendants for travel-related
9 products or services during the time period between December
10 1, 1996, and the date this Order is entered, as well as any
11 further information the Commission deems necessary to
12 effectuate a consumer redress program;

13 C. Each Defendant shall also furnish to the Commission,
14 in accordance with 31 U.S.C. § 7701, their taxpayer
15 identification number (social security number, social
16 insurance number, employer identification number, or Revenue
17 Canada identification number), which shall be used for
18 purposes of collecting and reporting on any delinquent
19 amount arising out of each Defendant's relationship with the
20 government; and

21 D. Any redress administrator shall destroy all records
22 relating to this matter six years after the transfer of any
23 remaining redress funds to the FTC Treasury account or the
24 closing of the account from which such funds were disbursed,
25 whichever is earlier, provided that no records shall be
26 destroyed unless and until a representative of the
27 Commission has received and approved the administrator's
28 final accounting report. Records shall be destroyed in

1 accordance with disposal methods and procedures to be
2 specified by the Commission. The Commission may, in its
3 sole discretion, require that such records, in whole or in
4 part, be transferred, in lieu of destruction, to the
5 Commission.

6 **V. RELIANCE ON DISCLOSURES**

7 **IT IS FURTHER ORDERED** that the Commission's agreement to
8 this Order is expressly premised upon the truthfulness,
9 accuracy, and completeness of the financial condition of
10 Named Defendants, as represented in their respective
11 financial statements dated July 24, 2000 (HPT), July 18,
12 2000 (Burke), July 24, 2000 (Clarke), and July 24, 2000
13 (Templeton), and submitted documents listed in Attachment A,
14 upon which the Commission relied in negotiating and agreeing
15 to the amount of consumer redress and the other terms of
16 this Order. If, upon motion by the Commission, this Court
17 finds that any Named Defendant failed to file the sworn
18 statement required by Section XII, or filed a financial
19 statement that failed to disclose any material asset, or
20 materially misrepresented the value of any asset, or made
21 any other material misrepresentation in or omission from the
22 financial statement or documents listed in Attachment A, the
23 Court shall enter judgment against such Named Defendant, in
24 favor of the Commission, in the amount of \$1,150,599, which
25 is intended to represent the total loss to consumers or
26 unjust enrichment obtained by Defendants, and which will
27 become immediately due and payable. For purposes of this
28 Section, and any subsequent proceedings to enforce payment,

1 including but not limited to a non-dischargeability
2 complaint filed in a bankruptcy proceeding, Named Defendants
3 waive any right to contest any allegations in the
4 Commission's Complaint.

5 **VI. DISTRIBUTION OF ORDER BY DEFENDANTS**

6 **IT IS FURTHER ORDERED** that, for a period of five years
7 from the date of entry of this Order, Named Defendants
8 shall:

9 A. Provide a copy of this Order to, and obtain a
10 signed and dated acknowledgment of receipt from each officer
11 or director, each individual serving in a management
12 capacity, all personnel involved in responding to consumer
13 complaints or inquiries, and all sales personnel, whether
14 designated as employees, consultants, independent
15 contractors or otherwise, immediately upon employing or
16 retaining any such persons, for any business that uses
17 telemarketing to market or sell its products or services,
18 where any Named Defendant is the majority owner of the
19 business or directly or indirectly controls the business;
20 and

21 B. Maintain for a period of three years after
22 creation, and upon reasonable notice, make available to
23 Plaintiff's representatives, the original signed and dated
24 acknowledgments of the receipt of copies of this Order, as
25 required in Subsection (A).

26 **VII. MONITORING COMPLIANCE OF SALES PERSONNEL**

27 **IT IS FURTHER ORDERED** that in connection with any
28 business that uses telemarketing to market or sell its

1 products or services, where any Named Defendant is the
2 majority owner of the business or directly or indirectly
3 controls the business, such Named Defendants are hereby
4 permanently restrained and enjoined from:

5 A. Failing to take reasonable steps sufficient to
6 monitor and ensure that all employees and independent
7 contractors engaged in sales or other customer service
8 functions comply with Sections I - III and XIV of this
9 Order. Such steps shall include adequate monitoring of
10 sales presentations or other calls with customers, and shall
11 also include, at a minimum, the following: (1) listening to
12 the oral representations made by persons engaged in sales or
13 other customer service functions; (2) establishing a
14 procedure for receiving and responding to consumer
15 complaints; and (3) ascertaining the number and nature of
16 consumer complaints regarding transactions in which each
17 employee or independent contractor is involved; provided
18 that this Section does not authorize or require Defendants
19 to take any steps that violate any federal, state, or local
20 laws;

21 B. Failing promptly to investigate fully any consumer
22 complaint received by any business to which this Section
23 applies; and

24 C. Failing to terminate any employee or independent
25 contractor whom Defendants know or should know is not
26 complying with the provisions of this Order.

27 **VIII. RECORD KEEPING PROVISIONS**

28 **IT IS FURTHER ORDERED** that, for a period of five years

1 after entry of this Order in connection with any business
2 that uses telemarketing to market or sell its products or
3 services, where any Named Defendant is the majority owner of
4 the business or directly or indirectly controls the
5 business, such Named Defendants are hereby permanently
6 restrained and enjoined from failing to create, and from
7 failing to retain for a period of three years following the
8 date of such creation, unless otherwise specified:

9 A. Books, records and accounts that, in reasonable
10 detail, accurately and fairly reflect the cost of goods,
11 products or services sold, revenues generated, and the
12 disbursement of such revenues;

13 B. Records accurately reflecting: the name, address,
14 and telephone number of each person employed in any capacity
15 by such business, including as an independent contractor;
16 that person's job title or position; the date upon which the
17 person commenced work; and the date and reason for the
18 person's termination, if applicable. The businesses subject
19 to this Section shall retain such records for any terminated
20 employee for a period of two years following the date of
21 termination;

22 C. Records containing the names, addresses, phone
23 numbers, dollar amounts paid, quantity of items or services
24 purchased, and description of items or services purchased,
25 for all consumers to whom such business has sold, invoiced
26 or shipped any goods, products or services;

27 D. Records that reflect, for every consumer complaint
28 or refund request, whether received directly or indirectly

1 or through any third party:

2 1. The consumer's name, address, telephone number
3 and the dollar amount paid by the consumer;

4 2. The written complaint or refund request, if
5 any, and the date of the complaint or refund request;

6 3. The basis of the complaint, including the name
7 of any salesperson complained against, and the nature
8 and result of any investigation conducted concerning any
9 complaint;

10 4. Each response and the date of the response;

11 5. Any final resolution and the date of the
12 resolution; and

13 6. In the event of a denial of a refund request,
14 the reason for the denial; and

15 E. Copies of all sales scripts, training materials,
16 advertisements, or other marketing materials utilized;

17 provided that copies of all sales scripts, training
18 materials, advertisements, or other marketing materials
19 utilized shall be retained for three years after the last
20 date of dissemination of any such materials.

21 **IX. COMPLIANCE REPORTING BY DEFENDANTS**

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

24 A. For a period of five years from the date of entry
25 of this Order, Named Defendants shall notify the Plaintiff
26 of the following:

27 1. Any changes in Named Defendants' residence,
28 mailing addresses, and telephone numbers, within ten

1 days of the date of such change;

2 2. Any changes in Named Defendants' employment
3 status (including self-employment) within ten days of
4 such change. Such notice shall include the name and
5 address of each business that such Named Defendant is
6 affiliated with or employed by, a statement of the
7 nature of the business, and a statement of such
8 Defendant's duties and responsibilities in connection
9 with the business or employment; and

10 3. Any proposed change in the structure of any
11 corporate Defendant, or of any business entity that is
12 engaged in the sale, offering for sale, or distribution
13 of Travel Accommodations, where any Named Defendant is
14 the majority owner of the business or directly or
15 indirectly controls the business, such as creation,
16 dissolution, assignment, sale, merger, creation of
17 subsidiaries, dissolution of subsidiaries, proposed
18 filing of a bankruptcy petition, change in the corporate
19 name or address, or any other change that may affect
20 compliance obligations arising out of this Order, thirty
21 days prior to the effective date of any proposed change;
22 *provided, however, that, with respect to any proposed*
23 *change in the corporations about which Named Defendants*
24 *learn less than thirty days prior to the date such*
25 *action is to take place, Named Defendants shall notify*
26 *the Plaintiff as soon as is practicable after learning*
27 *of such proposed change;*

28 B. One hundred eighty days after the date of entry of

1 this Order, Named Defendants shall provide a written report
2 to the Plaintiffs, sworn to under penalty of perjury,
3 setting forth in detail the manner and form in which
4 Defendants have complied and are complying with this Order.
5 This report shall include but not be limited to:

6 1. The individual Defendants' current residence
7 addresses and telephone numbers;

8 2. Named Defendants' current employment, business
9 addresses and telephone numbers, a description of the
10 business activities of each such employer, and Named
11 Defendants' titles and responsibilities for each
12 employer;

13 3. A copy of each acknowledgment of receipt of
14 this Order obtained by Named Defendants pursuant to
15 Section VI; and

16 4. A statement describing the manner in which
17 Defendants have complied and are complying with
18 Sections I - III and XIV of this Order;

19 C. Upon written request by a representative of the
20 Plaintiff, Named Defendants shall submit additional written
21 reports (under oath, if requested) and produce documents on
22 fifteen business days' notice with respect to any conduct
23 subject to this Order;

24 D. For the purposes of this Order, Defendants shall,
25 unless otherwise directed by the Commission's authorized
26 representatives, mail all written notifications to:

27 Assistant Regional Director, Western Region - Los Angeles,
28 10877 Wilshire Blvd., Ste. 700, Los Angeles, CA 90024; Re:

1 FTC v. Holiday Plus Travel, Inc.;

2 E. For the purposes of this Section, "employment"
3 includes the performance of services as an employee,
4 consultant, or independent contractor; and "employers"
5 include any individual or entity for whom Defendants perform
6 services as an employee, consultant, or independent
7 contractor; and

8 F. For purposes of the compliance reporting required
9 by this Section, Plaintiff is authorized to communicate
10 directly with Named Defendants.

11 **X. AUTHORITY TO MONITOR COMPLIANCE**

12 **IT IS FURTHER ORDERED** that Plaintiff is authorized to
13 monitor Defendants' compliance with this Order by all lawful
14 means, including but not limited to the following means:

15 A. Plaintiff is authorized, without further leave of
16 Court, to obtain discovery from any person in the manner
17 provided by Chapter V of the Federal Rules of Civil
18 Procedure, Fed. R. Civ. P. 26 - 37, including the use of
19 compulsory process pursuant to Fed. R. Civ. P. 45, for the
20 purpose of monitoring and investigating Defendants'
21 compliance with any provision of this Order;

22 B. Plaintiff is authorized to use representatives
23 posing as consumers and suppliers to Named Defendants, Named
24 Defendants' employees, or any business where any Named
25 Defendant is the majority owner of the business or directly
26 or indirectly controls the business, without the necessity
27 of identification or prior notice; and

28 C. Nothing in this Order shall limit the

1 Commission's lawful use of compulsory process, pursuant to
2 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to
3 investigate whether Defendants have violated any provision
4 of this Order, Section 5 of the FTC Act, 15 U.S.C. § 45, or
5 the Telemarketing Sales Rule, 16 C.F.R. Part 310.

6 **XI. ACCESS TO BUSINESS PREMISES**

7 **IT IS FURTHER ORDERED** that, for a period of five years
8 from the date of entry of this Order, for the purpose of
9 further determining compliance with this Order, Defendants
10 shall permit representatives of Plaintiff, within five
11 business days of receipt of a written notice from the
12 Plaintiff:

13 A. Access during normal business hours to any office,
14 or facility storing documents, of any business that uses
15 telemarketing to market or sell its products or services,
16 where any Named Defendant is the majority owner of the
17 business or where the business is directly or indirectly
18 controlled by any Named Defendant. In providing such
19 access, Defendants shall permit representatives of Plaintiff
20 to inspect and copy all documents relevant to any matter
21 contained in this Order; and shall permit Plaintiff's
22 representatives to remove documents relevant to any matter
23 contained in this Order for a period not to exceed five
24 business days so that the documents may be inspected,
25 inventoried, and copied; and

26 B. To interview the officers, directors, and
27 employees, including all personnel involved in responding to
28 consumer complaints or inquiries, and all sales personnel,

1 whether designated as employees, consultants, independent
2 contractors or otherwise, of any business to which
3 Subsection (A) applies, concerning matters relating to
4 compliance with the terms of this Order. The person
5 interviewed may have counsel present.

6 **XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

7 **IT IS FURTHER ORDERED** that, within five business days
8 after receipt by Defendants of this Order as entered by the
9 Court, Named Defendants shall submit to Plaintiff a truthful
10 sworn statement, in the form shown on Attachment B, that
11 shall acknowledge receipt of this Order.

12 **XIII. CUSTOMER LISTS**

13 **IT IS FURTHER ORDERED** that Defendants are hereby
14 permanently restrained and enjoined from selling, renting,
15 leasing, transferring, or otherwise disclosing the name,
16 address, telephone number, social security number, or other
17 identifying information of any person who paid any money to
18 Defendants, who was solicited to pay money to Defendants, or
19 whose identifying information was obtained for the purpose
20 of soliciting them to pay money to Defendants at any time
21 prior to the date this Order is entered, in connection with
22 the sale of the products or services referenced in the
23 Complaint. *Provided, however,* that Defendants may disclose
24 such identifying information to a law enforcement agency or
25 as required by any law, regulation, or court order.

26 **XIV. ENFORCEMENT OF CONTRACTS**

27 **IT IS FURTHER ORDERED** that Defendants and their
28 officers, agents, directors, servants, employees,

1 salespersons, independent contractors, attorneys,
2 corporations, subsidiaries, successors, assigns, and all
3 other persons or entities in active concert or participation
4 with them who receive actual notice of this Order by
5 personal service or otherwise, whether acting directly or
6 through any trust, corporation, subsidiary, division, or
7 other device, are hereby permanently restrained and enjoined
8 from demanding payment or enforcing or threatening to
9 enforce any contract or agreement which purports to sell
10 Travel Accommodations entered into by any Defendant prior to
11 the effective date of this Order.

12 **XV. RETENTION OF JURISDICTION**

13 **IT IS FURTHER ORDERED** that this Court retains
14 jurisdiction of this matter for all purposes.

15
16 Dated:

Raymond E. McKown
Barbara Chun
Attorneys for Plaintiff
Federal Trade Commission

17
18
19 Dated:

Blain Burke, individually
Defendant

20
21
22 Dated:

Kevin M. Clarke, individually and
as an officer of Holiday Plus Travel,
LLC, Defendant

23
24
25 Dated:

Lizette Templeton, individually and
as an officer of Holiday Plus Travel,
LLC, Defendant

26
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1 Dated:

Holiday Plus Travel, LLC by its
CEO and Member, Lizette Templeton
Defendant

4 Approved as to Form:

Kevin M. Clarke
Attorney for Defendants

7 **IT IS SO ORDERED.**

9 Dated:

UNITED STATES DISTRICT JUDGE

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ATTACHMENT B

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

FEDERAL TRADE COMMISSION,)	No.
)	
Plaintiff,)	
v.)	
HOLIDAY PLUS TRAVEL, LLC a)	AFFIDAVIT OF DEFENDANT
California company;)	ACKNOWLEDGING RECEIPT OF
)	SIGNED ORDER AND
BLAIN BURKE, individually;)	REAFFIRMING FINANCIAL
)	STATEMENTS
KEVIN M. CLARKE, individually)	
and as an officer of HOLIDAY)	
PLUS TRAVEL, LLC; and)	
)	
LIZETTE TEMPLETON, individually)	
and as an officer of HOLIDAY)	
PLUS TRAVEL, LLC,)	
)	
Defendants.)	

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

1. My name is _____. 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.

1 2. I am a defendant in FTC v. HOLIDAY PLUS TRAVEL, LLC
2 et al. No. (United States District Court for the
3 Central District of California).

4 3. On ____ [date]____, I received a copy of the
5 Stipulated Final Judgment and Order for Permanent Injunction
6 ("Order"), which was signed by the Honorable ____ [name of
7 Judge]____ on ____ [date]____. A true and correct copy of
8 the Order I received is appended to this Affidavit. I have
9 read the signed Order.

10 4. I hereby state that the information contained in
11 the financial statements I signed on ____ [date]____, and the
12 information identified in Attachment A of the Stipulated
13 Final Judgment and Order for Permanent Injunction, was true,
14 accurate, and complete at the time the financial statements
15 and Attachment A were respectfully signed.

16 I declare under penalty of perjury under the laws of the
17 United States that the foregoing is true and correct.

18 Executed on ____ [date]____, at ____ [city, state]____.

19
20 _____
[Defendant]

21
22 State of _____, City of _____.

23 Subscribed and sworn to before me

24 this ____ day of _____, 2000.

25
26 _____
Notary Public
My Commission Expires:
27 _____
28

1 CERTIFICATE OF SERVICE

2 My name is Raymond E. McKown. I am an attorney employed
3 by the Federal Trade Commission, 10877 Wilshire Boulevard,
4 Suite 700, Los Angeles, California 90024. On

5 _____ I placed the document captioned
6 "STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT
7 INJUNCTION," in the first class United States mail addressed
8 to the following:

9
10 Kevin M. Clarke
11 Ronnin Law Group
12 5959 West Century Blvd., Suite 510
13 Los Angeles, CA 90045
14 Attorney for Defendants

15 I declare under penalty of perjury that the foregoing
16 is true and correct. Executed this ___ day of _____ at
17 Los Angeles, California.

18 _____
19 Raymond E. McKown
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