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1 having moved for a preliminary injunction, and the parties having agreed to entry of this
2 Stipulated Preliminary Injunction (“Preliminary Injunction”), and the Court having
3 considered the Complaint, declarations, and other materials filed in this action, and now
4 being advised in the premises, finds that:

5 1. This Court has jurisdiction of the subject matter of this case and
6 jurisdiction over all the parties, and venue in this district is proper;

7 2. For purposes of this Stipulated Preliminary Injunction, the Complaint states
8 a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act,
9 15 U.S.C. §§ 45(a) and 53(b);

10 3. The Commission and Defendants agree that this Preliminary Injunction is
11 binding in form and scope pursuant to Federal Rule of Civil Procedure 65(d);

12 4. This Preliminary Injunction is in the best interest of all parties to this action
13 and is in the public interest;

14 5. This Preliminary Injunction does not constitute, and shall not be interpreted
15 to constitute, an admission by Defendants that they have engaged in violations of any law
16 or regulation. The stipulation and entry of this Preliminary Injunction is not to be
17 construed or deemed a waiver of any claims

1 Uniform Commercial Code), contracts, shares of stock, and all cash, wherever located;

2 2. "Billing Information" means an

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1 express informed consent of consumers to be charged for any such product or service
2 using an account identified with sufficient specificity for consumers to understand what
3 account will be charged. To evidence consumers' express informed consent, Defendants
4 must disclose clearly and conspicuously, before consumers provide any billing
5 information or pay any fee, all material terms and conditions of the offer or agreement,
6 and obtain consumers' affirmative agreement. Material terms and conditions of an offer
7 or agreement involving a Continuity Program include, but are not limited to:

- 8 1. the fact that the customer's account will be charged unless the
9 customer takes an affirmative action to avoid the Charge(s);
- 10 2. the date(s) the Charge(s) will be submitted for payment;
- 11 3. the specific steps the customer must take to avoid the Charge(s);
- 12 4. all material terms and conditions of a guarantee, refund, or return
13 policy, or if Defendants have a policy of not making refunds or
14 accepting returns, a statement that this is Defendants' policy;
- 15 5. the fact, if true, that periodic shipments of products or the periodic
16 provisions or the continuation of services will occur without further
17 action by consumers;
- 18 6. a description of each good or the type of good to be included in each
19 shipment or a description of the services that will be performed or
20 continued;
- 21 7. if the products are shipped or services provided on a periodic basis,
22 the approximate interval between each shipment or service period or
23 the number of shipments or service periods per year;
- 24 8. the cost or range of costs for each shipment or service period,
25 including shipping and handling fees and restocking fees;
- 26 9. the minimum number of purchases or minimum service period
27 required by Defendants, if any; and
- 28 10. any limitations or restrictions concerning free trials that Defendants

1 offer to consumers in connection with a Continuity Program
2 including, but not limited to, the dates that a free trial period begins
3 and ends;

4 B. Misrepresenting, in any manner, expressly or by implication:

- 5 1. any fact material to a consumer's decision to purchase any product
6 or service sold or offered for sale by any Defendant; and
7 2. any material terms and conditions of an offer or agreement
8 involving a Continuity Program including, but not limited to:
9 a. the fact that the consumers' account(s) will be charged unless
10 they take affirmative action to avoid the Charge(s);
11 b. the date(s) the Charge(s) will be submitted for payment;
12 c. the specific steps consumers must take to avoid the Charge(s)
13 or to cancel the Continuity Program;
14 d. that any product or service offered as part of an offer or
15 agreement involving a Continuity Program is not offered as
16 part of such an offer or agreement, or may be purchased
17 without entering into such an agreement;
18 e. that consumers can "cancel anytime" or the period of time
19 within which consumers can cancel;
20 f. that consumers have agreed to receive additional products or
21 services;
22 g. that consumers are obligated to pay for subsequently shipped
23 products or services provided;
24 h. that Defendants will honor consumers' requests to cancel
25 their participation in Defendants' programs;
26 i. that consumers will be able to cancel their participation in
27 Defendants' programs easily; and
28 j. that Defendants will use consumers' credit or debit card

1 account numbers only to charge for shipping and handling;

2 C. Failing to honor a request that Defendants receive to cancel any sale or
3 transaction involving enrollment in a Continuity Program, and to provide a refund in
4 accordance with Defendants' disclosed guarantee, refund, or return policy; and

5 D. If Defendants require any mechanism in order for a consumer to obtain a
6 refund, including, but not limited to, a return authorization number, failing to employ
7 technology and/or personnel sufficient to enable a consumer to obtain such mechanism
8 within five business days of the consumer's first attempt to obtain such mechanism.

9 **II.**

10 **Business Activities Prohibited Pursuant to the Electronic Fund Transfer Act**

11 **IT IS FURTHER ORDERED** that Defendants, and their officers, agents,
12 directors, servants, employees, salespersons, independent contractors, attorneys,
13 corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or
14 entities in active concert or participation with them, who receive actual notice of this
15 Preliminary Injunction by personal service or otherwise, whether acting directly or
16 through any trust, corporation, subsidiary, division, or other device, or any of them, are
17 hereby preliminarily restrained and enjoined from:

18 A. In connection with any consumer who is enrolled into any Continuity
19 Program subsequent to the date of this Preliminary Injunction and who uses a debit card
20 or other means of electronic funds transfer,

- 21 1. failing to obtain written authorization for preauthorized Electronic
22 Fund Transfers from a consumer's account before initiating any
23 Preauthorized Electronic Fund Transfer, as required by Section
24 907(a) of EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of
25 Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section
26 205.10 of the Federal Reserve Board's Official Staff Commentary to
27 Regulation E, 12 C.F.R. § 205, Supp. I; and
- 28 2. failing to comply with Section 205.10 of the Federal Reserve

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Board's Official Staff Commentary to Regulation E, 12 C.F.R.

§ 205, Supp. I; and

B. In connection with any consumer who was enrolled into any Continuity Program prior to the date of this Preliminary Injunction and who indicated the use of a credit card when in fact a debit card was used, if entities covered by this provision later find that the card used is a debit card, failing to obtain written authorization for

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1 endorsements or trade names, is true, non-misleading, and, at the time it is made,
2 Defendants possess and rely upon competent and reliable scientific evidence that
3 substantiates such representation.

4 **IV.**

5 **Restriction on Dissipation of Certain Specified Assets**

6 A. **IT IS FURTHER ORDERED** that Defendant NextClick Media, LLC, and
7 its officers, directors, agents, servants, employees, salespersons, distributors,
8 corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in
9 active concert or participation with them who receive actual notice of this Preliminary
10 Injunction by personal service, facsimile, or otherwise, are hereby preliminarily
11 restrained and enjoined from this date forward from selling, liquidating, assigning,
12 transferring, converting, loaning, further encumbering, pledging, concealing, dissipating,
13 spending, withdrawing, or otherwise disposing of any funds, real or personal property, or
14 other assets or any interest therein, of NextClick Media, LLC, wherever located,
15 including any assets outside the territorial United States, except for business expenses
16 that are reasonable, actual, ordinary, and necessary, and reasonable attorneys fees.
17 Defendant NextClick Media, LLC, shall produce a quarterly balance sheet to the
18 Commission no later than ten (10) business days after the end of each quarter.
19 Defendant NextClick Media, LLC, shall further create and maintain books, records, and
20 accounts which, in reasonable detail, accurately, fairly, and completely reflect the
21 incomes, assets, disbursements, transactions, and use of monies by any Defendant or
22 other entity directly or indirectly under the control of any Defendant.

23 B. **IT IS FURTHER ORDERED** that Defendant Next Internet, LLC, and its
24 officers, directors, agents, servants, employees, salespersons, distributors, corporations,
25 subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert
26 or participation with them who receive actual notice of this Preliminary Injunction by
27 personal service, facsimile, or otherwise, are hereby preliminarily restrained and enjoined
28 from this date forward from selling, liquidating, assigning, transferring, converting,

1 offered for sale, distributed, or sold by any Defendant;

2 B. Destroying, erasing, mutilating, concealing, altering, transferring or
3 otherwise disposing of, in any manner, directly or indirectly, contracts, agreements,
4 customer files, customer lists, customer addresses and telephone numbers,
5 correspondence, advertisements, brochures, sales material, training material, sales
6 presentations, documents evidencing or referring to products or services sold by
7 Defendants, data, computer tapes, disks, or other computerized records, books, written or
8 printed records, handwritten notes, telephone logs, “verification” or “compliance” tapes
9 or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers,
10 personal and business canceled checks and check registers, bank statements, appointment
11 books, copies of federal, state or local business or personal income or property tax
12 returns, and other documents or records of any kind, including electronically-stored
13 materials, that relate to the business practices alleged in the Commission’s Complaint or
14 business or personal finances of any Defendant or other entity directly or indirectly under
15 the control of any Defendant.

16 **VI.**

17 **Accounting Provisions**

18 **IT IS FURTHER ORDERED** that, within fifteen (15) business days after service
19 of this Preliminary Injunction,

20 A. For any smoking-cessation product or service, or for any product or service
21 involving a Continuity Program, which Defendants, their officers, directors, agents,
22 servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates,
23 successors, or assigns have advertised, marketed, promoted, offered for sale, or sold,
24 Defendants shall serve on counsel for the Commission a detailed accounting, broken
25 down by product or service, of:

- 26 1. all gross revenues obtained from sales connected with any such
27 promotions, products, or services from inception of sales through
28 the date of entry of this Prelit ed; Prelit

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- B. On the same business day as any repatriation under Subparagraph A above,
 - 1. notify the Commission of the name and location of the financial institution or other entity that is the recipient of any such funds, documents, or assets; and
 - 2. serve this Preliminary Injunction on any such financial institution or other entity;
- C. Provide the Commission with a full accou

1 **IX.**

2 **Notification of Business Activities**

3 **IT IS FURTHER ORDERED** that Defendants Kenneth Chan and Albert Chen
4 are hereby restrained and enjoined from creating, operating, or exercising any control
5 over any business entity not named herein, including any partnership, limited partnership,
6 joint venture, sole proprietorship, or corporation, without first providing counsel for the
7 Commission with a written statement disclosing the following: (1) the name of the
8 business entity; (2) the address and telephone number of the business entity; (3) the
9 names of the business entity's officers, directors, principals, managers, and employees;
10 and (4) a detailed description of the business entity's intended activities.

11 **IT IS FURTHER ORDERED** that Defendants Kenneth Chan and Albert Chen
12 shall notify the Commission at least seven (7) days prior to any affiliat (1) the name of t i

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1 THOMAS DAHDOUH
Federal Trade Commission
2 901 Market Street, Suite 570
San Francisco, CA 94103
3 Phone (415) 848-5100/Fax (415) 848-5184
Email: tdahdouh@ftc.gov

4 and

5 LEWIS ROSE
Kelley Drye & Warren, LLC
6 3050 K Street, N.W.
Suite 400
7 Washington, DC 20007
8 Phone: (202) 342-8821/Fax: (202) 342-8451
Email: lrose@kelleydrye.com

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10 **XIV.**

11 **Retention of Jurisdiction**

12 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
13 matter for all purposes.

14 IT IS SO STIPULATED:

15 DATED: 4/21/2008 /s/ _____
16 JANICE L. CHARTER
DAVID M. NEWMAN
THOMAS DAHDOUH
17
18 Attorneys for Plaintiff
Federal Trade Commission

19
20 DATED: 4/21/2008 /s/ _____
21 LEWIS ROSE
D. REED FREEMAN
MICHAEL LYNCH
22 Kelley Drye & Warren, LLC
23 Attorneys for Defendants

24 PURSUANT TO STIPULATION, IT IS SO ORDERED:

25
26 DATED: April 23, 2008 _____
27 VAUGHN R. WALKER
UNITED STATES DISTRICT JUDGE
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