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1 whose names appear hereafter; and the parties have agreed to settlement of this
2 action upon the following terms and conditions, without adjudication of any issue
3 of fact or law, and without Defendants admitting that any issue of fact or law other
4 than those related to jurisdiction and venue is true;

5 THEREFORE, on the joint motion of Plaintiff and Defendants, it is hereby
6 ORDERED, ADJUDGED, and DECREED as follows:

- 7 1. This Court has jurisdiction of the subject matter and of the parties pursuant
8 to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C.
9 §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
- 10 2. Venue is proper as to all parties in the Central District of California under 15
11 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).
- 12 3. The activities of Defendants are in or affecting commerce as defined in
13 Section 4 of the FTC Act, 15 U.S.C. § 44.
- 14 4. The Complaint states a claim upon which relief may be granted against
15 Defendants under Sections 1303(c) and 1306(d) of the Children's Online
16 Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506,
17 6502(c), and 6505(d); the Commission's Children's Online Privacy
18 Protection Rule, 16 C.F.R. Part 312; and Sections 5(a)(1), 5(m)(1)(A), 13(b),
19 and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§
20 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a). Among other things, the
21 complaint alleges that Defendants violated COPPA by failing to provide
22 notice to parents of their information practices, and to obtain verifiable
23 parental consent prior to collecting, using, and or disclosing personal
24 information from children online.
- 25 5. Defendants have entered into Consent Decree and Order for Civil
26 Penalties, Injunction, and Other Relief ("Order") freely and without
27 coercion. Defendants further acknowledge that they have read the
28 provisions of this Order and are prepared to abide by them.

1 6. Plaintiff and Defendants hereby waive rights to appeal or otherwise
2 challenge the validity of this Order.

3 7. Plaintiff and Defendants stipulate and agree that entry of this Order shall
4 constitute a full, complete, and final settlement of this action.

5 8. Defendants have agreed that this Order does not entitle them to seek or to
6 obtain attorneys' fees as a prevailing party under the Equal Access to Justice
7 Act, 28 U.S.C. § 2412, and Defendants hereby waive any rights to attorneys'
8 fees that may arise under said provision of law.

9 9. Entry of this Order is in the public interest.

10 DEFINITIONS

11 10. "Rule" means the Federal Trade Commission's Children's Online Privacy
12 Protection Rule, 16 C.F.R. Part 312.

13 11. The terms "child," "collects," "collection," "Commission," "delete,"
14 "disclosure," "Internet," "online contact information," "operator," "parent,"
15 "person," "personal information," "third party," "verifiable consent," and
16 "website or online service directed to children," mean as those terms are
17 defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

18 12. "Individual Defendant" means Howard Marks.

19 13. "Corporate Defendant" means Playdom, Inc., and its successors and assigns.

20 14. "Defendants" means both the Individual Defendant and the Corporate
21 Defendant.

22 INJUNCTION

23 15. IT IS ORDERED that Defendants, and their officers, agents,
24 representatives, and employees, and persons in active concert or
25 participation with them who receive actual notice of this Order by personal
26 service or otherwise, are hereby enjoined, directly or through any
27 corporation, subsidiary, division, website, or other device, from:
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A. Failing, on any website or online service directed to children, or on any website or online service through which they, with actual knowledge, collect, use, and/or disclose personal information from

1 corporation, subsidiary, division, ~~website~~, or other device, in connection
2 with the operation of any website or online service, from making any
3 misrepresentation in the website or online service's privacy policy or
4 elsewhere about the website or online ~~service~~'s collection, use, disclosure, or
5 deletion of children's personal information.

6 DELETION OF CHILDREN'S PERSONAL INFORMATION

7 17. IT IS FURTHER ORDERED that Defendants, within ten (10) days from
8 the date of receipt of notice of the ~~entry~~ of this Order shall delete all personal
9 information collected and maintained within their possession, custody, or
10 control in violation of the Rule at any time from April 21, 2000 through the
11 date of entry of this Order.

12 CONSUMER EDUCATION REMEDY

13 18. IT IS FURTHER ORDERED

CIVIL PENALTY

19. IT IS FURTHER ORDERED that Defendants, jointly and severally, shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), in the amount of three million dollars (\$3,000,000).

20. Prior to or concurrently with Defendants' execution of this Order, Defendants shall turn over the full amount of the civil penalty to their attorneys, who shall hold the entire sum for no purpose other than payment to the Treasurer of the United States as a result of the entry of this Order by the Court. Within five (5) days of receipt of notice of the entry of this Order, Defendants' attorneys shall transfer the sum of three million dollars (\$3,000,000) in the form of a wire transfer or certified cashier's check made payable to the Treasurer of the United States. The check and/or written confirmation of the wire transfer shall be delivered in accordance with procedures specified by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, DC 20530.

21. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

22. Defendants agree that they will not contest the Commission's right to any payment or money judgment in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Order.

23. Defendants agree that the judgment represents a civil penalty owed to the United States Government, and is not compensation for actual pecuniary loss, and therefore, as to the Individual Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

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

6 COMPLIANCE MONITORING

7 25. IT IS FURTHER ORDERED that for the purpose of monitoring and
8 investigating compliance with any provision of this Order:

9 A. Within fourteen (14) days of receipt of a written request from a
10 representative of the Commission, Defendants each shall submit
11 written responses, which are true and accurate and sworn to under
12 penalty of perjury; produce documents for inspection and copying;
13 appear for deposition; and provide entry during normal business hours
14 to any business location in each Defendant's possession or direct or
15 indirect control to inspect the business operation. Provided that,
16 Defendants, after attempting to resolve a dispute without court action
17 and for good cause shown, may file a motion with this Court seeking
18 an order including one or more of the protections set forth in Fed. R.
19 Civ. P. 26(c).

20 B. In addition, the Commission is authorized to use all other lawful
21 means, including but not limited to:

- 22 1. Obtaining discovery from any person, without further leave of
23 court, using the procedures prescribed by Fed. R. Civ. P. 30, 31,
24 33, 34, 36, 45 and 69;
25 2. Having its representatives pose as consumers and suppliers to
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1 C. Defendants each shall permit representatives of the Commission to
2 interview any employer, consultant, independent contractor,
3 representative, agent, or employee who has agreed to such an
4 interview, relating in any way to the conduct subject to this Order.
5 The person interviewed may have counsel present, including
6 Defendants' counsel and any individual counsel.

7 D. For purposes of the compliance reporting and monitoring required by
8 this Order, the Commission is authorized to communicate directly
9 with each Defendant. Defendants may have counsel present.

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

16 COMPLIANCE REPORTING

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

19 A. For a period of four (4) years from the date of entry of this Order,

20 1. The Individual Defendant shall notify the Commission of the
21 following:

22 a. Any changes in the Individual Defendant's residence,
23 mailing address, and telephone number, within ten (10)
24 days of the date of such change;

25 b. Any changes in the Individual Defendant's employment
26 status (including self-employment), and any change in
27 the Individual Defendant's ownership in any business
28 entity, within ten (10) days of the date of such change.

1 Such notice shall include the name and address of each
2 business that the Individual Defendant is affiliated with,
3 employed by, creates or forms, or performs services for;
4 a detailed description of the nature of the business; and a
5 detailed description of the individual Defendant's duties
6 and responsibilities in connection with the business or
7 employment; and,

8 c. Any changes in the structure of any business entity that
9 the Individual Defendant directly or indirectly controls or
10 has an ownership interest in, that may affect compliance
11 obligations arising under this Order, including but not
12 limited to: incorporation or other organization; a
13 dissolution, assignment, sale, merger, or other action; the
14 creation or dissolution of a subsidiary, parent, or affiliate
15 that engages in any acts or practices subject to this Order;
16 or a change in the business name or address, at least
17 thirty (30) days prior to such change, *provided that*, with
18 respect to any such change in the business entity about
19 which the Individual Defendant learns less than thirty
20 (30) days prior to the date such action is to take place, the
21 Individual Defendant shall notify the Commission as
22 soon as is practicable after obtaining such knowledge;
23 and

24 d. Any changes in the Individual Defendant's name or use
25 of any aliases or fictitious names within ten (10) days of
26 the date of such change.

27 2. The Corporate Defendant shall notify the Commission of any
28 changes in the structure of the Corporate Defendant or any
business entity that it directly or indirectly controls, or has an

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1 Individual Defendant's duties and responsibilities in
2 connection with the business or employment; and,

3 c. Any other changes required to be reported under Section
4 26.A. of this Order.

5 2. For the Corporate Defendant, and for the Individual Defendant
6 in connection with any business that the Individual Defendant
7 controls, directly or indirectly, or in which he has a majority
8 ownership interest:

9 a. A statement setting forth in detail the criteria and process
10 through which each Defendant's websites or online
11 services register visitors online for any activity requiring
12 the submission of personal information, and a copy of
13 each different version of screen or page providing or
14 collecting registration information;

15 b. A copy of each different version of privacy notice posted
16 on each website or online service operated by each
17 Defendant;

18 c. A statement setting forth in detail each place where the
19 privacy notice on any such website or online service is
20 located and a copy of each different version of screen or
21 page on which such website or online service collects
22 personal information;

23 d. A copy of each different version of privacy notice sent to
24 parents of children that register on each website or online
25 service;

26 e. A statement setting forth in detail when and how each
27 such notice to parents is provided;

28 f. A statement setting forth in detail the methods used to

1 obtain verifiable parental consent prior to any collection,
2 use, and/or disclosure of personal information from
3 children;

4 g. A statement setting forth in detail the means provided for
5 parents to review the personal information collected from
6 their children and to refuse to permit its further use or
7 maintenance;

8 h. A statement setting forth in detail why each type of
9 information collected from a child is reasonably
10 necessary for the provision of the particular related
11 activity;

12 i. A statement setting forth in detail the procedures used to
13 protect the confidentiality, security, and integrity of
14 personal information collected from children;

15 j. A copy of each acknowledgment of receipt of this Order,
16 obtained pursuant to the Section titled "Distribution of
17 Order"; and,

18 k. Any other changes required to be reported under Section
19 26.A. of this Order.

20 C. Each Defendant shall notify the Commission of the filing of a
21 bankruptcy petition by such Defendant within fifteen (15) days of
22 filing.

23 D. For the purposes of this Order Defendants shall, unless otherwise
24 directed by the Commission's authorized representatives, send by
25 overnight courier (not the U.S. Postal Service) all reports and
26 notifications to the Commission that are required by this Order to the
27 following address:
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1 B. Individual Defendant as a controlling person: For any business engaged
2 in conduct related to the subject matter of the Order that the Individual
3 Defendant controls, directly or indirectly, or in which the Individual
4 Defendant has a majority ownership interest, the Individual Defendant
5 must deliver a copy of this Order to: (1) all principals, officers,
6 directors, and managers; and (2) all employees, agents, and
7 representatives who have responsibilities related to the operation of
8 any website or online service subject to this Order. For current
9 personnel, delivery shall be within five (5) days of service of this
10 Order upon the Individual Defendant. For new personnel, delivery
11 shall occur prior to their assuming their responsibilities.

12 C. Individual Defendant as employee or non-control person: For any
13 business where the Individual Defendant is not a controlling person of
14 a business but otherwise engages in conduct related to the subject
15 matter of this Order, the Individual Defendant must deliver a copy of
16 this Order to all principals and managers of such business before
17 engaging in such conduct.

18 D. Defendants must secure a signed and dated statement acknowledging
19 receipt of the Order, within thirty (30) days of delivery, from all
20 persons receiving a copy of the Order pursuant to this Section.
21 Defendants shall maintain copies of the signed statements, as well as
22 other information regarding the fact and manner of its compliance,
23 including the name and title of each person to whom a copy of the
24 Order has been provided and, upon request, shall make the statements
25 and other information available to the Commission.

26 ACKNOWLEDGMENT OF RECEIPT OF ORDER

27 29. IT IS FURTHER ORDERED that each Defendant, within five (5) business
28 days of receipt of this Order as entered by the Court, must submit to the
Commission a truthful sworn statement acknowledging receipt of this Order.

1 PROVISION OF TAXPAYER IDENTIFYING NUMBERS

2 30. IT IS FURTHER ORDERED that the Corporate Defendant is hereby
3 required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal
4 Trade Commission its taxpayer identifying number (employer identification
5 number), which shall be used for poses of collecting and reporting any
6 delinquent amount arising out of its relationship with the government.

7 RETENTION OF JURISDICTION

8 31. This Court shall retain jurisdiction of this matter for the purposes of
9 construction, modification, and enforcement of this Order.

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11 JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and
12 against Defendants, pursuant to all terms and conditions recited above.

13 Dated this 24th day of May, 2011.

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1 The parties, by their counsel, hereby consent to the terms and conditions of
2 the Order as set forth above and consent to the entry thereof.

3
4 FOR PLAINTIFF
5 THE UNITED STATES OF AMERICA:

6 TONY WEST
7 Assistant Attorney General,
8 Civil Division
9 U.S. DEPARTMENT OF JUSTICE

10 ANDRÉ BIROTTE, JR.
11 United States Attorney
12 Central District of California
13 LEE WEIDMAN, AUSA
14 Chief, Civil Division

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_____/s Gary Plessman

GARY PLESSMAN, AUSACivil Division

G92 T PLEJ5MAN, AUSA

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FOR THE FEDERAL TRADE COMMISSION:

s/Mamie Kresses

MAMIE KRESSES
Attorney
600 Pennsylvania Avenue, NW

1 FOR DEFENDANT

2 PLAYDOM, INC:

3 s/Brad Serwin

4 BRAD SERWIN
5 Chief Operating Officer
6 Playdom, Inc.

7 APPROVED AS TO CONTENT AND FORM:

8 s/ Andrew Serwin

9
10 ANDREW SERWIN
11 Foley & Lardner LLP
12 Attorney for Playdom, Inc.,
a subsidiary of Disney Enterprises, Inc.
Aserwin@foley.com

13 s/Mozelle W. Thompson

14 MOZELLE W. THOMPSON
15 Attorney for Playdom, Inc.,
16 a subsidiary of Disney Enterprises, Inc.
mozelle@fb.com

1 FOR DEFENDANT

2 HOWARD MARKS:

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4 s/Howard Marks

5 HOWARD MARKS

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7 APPROVED AS TO CONTENT AND FORM:

8
9 s/D. Reed Freeman

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12 Attorney for Howard Marks
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