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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 UNITED STATES OF AMERICA, :

17 Plaintiff, :

18 v. :

**CONSENT DECREE AND ORDER
FOR CIVIL PENALTIES, PERMANENT
INJUNCTION** C. J. Assistant U.S. District Court Judge C. N. Ph

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1 of fact or law, and without Defendant admitting any issue of fact or law other than those related to
2 jurisdiction and venue;

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

- 6 1. This Court has jurisdiction of the subject matter and of the parties pursuant to 28 U.S.C.
7 §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
- 8 2. Venue is proper as to all parties in the Northern District of California under 15 U.S.C.
9 § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).
- 10 3. The activities of Defendant are in or affecting commerce as defined in Section 4 of the FTC
11 Act, 15 U.S.C. § 44.
- 12 4. Defendant neither admits nor denies any of the allegations in the Complaint, except as
13 specifically stated in this Order. Only for purposes of this action, Defendant admits the facts
14 necessary to establish jurisdiction.
- 15 5. The Complaint states a claim upon which relief may be granted against Defendant under
16 Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC
17 Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a) and under Sections 1303(c) and
18 1306(d) of the Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C. §§
19 6501-6506, 6502(c), and 6505(d); the Commission’s Children’s Online Privacy Protection
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1 B. Defendant violated the FTC Act by making deceptive representations through its
2 privacy policy regarding the automatic collection of information from consumers'
3 mobile device address books; and
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5 C. Defendant violated COPPA and the FTC Act by failing to provide notice to parents
6 of its information practices, and to obtain verifiable parental consent prior to
7 collecting, using, and/or disclosing information from children online.
8

9 6. Defendant has entered into this Consent Decree and Order for Civil Penalties, Permanent
10 Injunction, and Other Relief ("Order") freely and without coercion. Defendant further
11 acknowledges that it has read the provisions of this Order and is prepared to abide by them.

12 7. Plaintiff and Defendant hereby waive all rights to appeal or otherwise challenge the validity
13 of this Order.

14 8. Plaintiff and Defendant stipulate and agree that entry of this Order shall constitute a full,
15 complete, and final settlement of this action.

16 9. Defendant has agreed that this Order does not entitle it to seek or to obtain attorneys' fees
17 as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, and Defendant
18 further waives any rights to attorneys' fees that may arise under said provision of law.
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20 10. Entry of this Order is in the public interest.
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1 child by any means, including but not limited to:

- 2 (1) Requesting that children submit personal information online;
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- 4 (2) Enabling children to make personal information publicly available through
- 5 a chat room, message board, or other means, except where the operator
- 6 deletes all individually identifiable information from postings by children
- 7 before they are made public, and also deletes such information from the
- 8 operator's records; or
- 9
- 10 (3) The passive tracking or use of any identifying code linked to an
- 11 individual, such as a cookie;

12 C. "Commission" means the Federal Trade Commission;

13 D. "Delete" means to remove personal information such that it is not maintained in

14 retrievable form and cannot be retrieved in the normal course of business;

15 E. "Disclosure" means, with respect to personal information:

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17 (1) The release of personal information collected from a child in identifiable

18 form by an operator for any purpose, except where an operator provides

19 such information to a person who provides support for the internal

20 operations of the website or online service and who does not disclose or

21 use that information for any other purpose. For purposes of this

22 definition:

23

24 (a) Release of personal information means the sharing, selling,

25 renting, or any other means of providing personal information to

26 any third party, and

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28 (b) Support for the internal operations of the website or online service

1 means those activities necessary to maintain the technical
2 functioning of the website or online service, or to fulfill a request
3 of a child as permitted by 16 C.F.R. Part 312.5(c)(2) and (3); or
4

- 5 (2) Making personal information collected from a child by an operator
6 publicly available in identifiable form, by any means, including by a
7 public posting through the Internet, or through a personal home page
8 posted on a website or online service; a pen pal service; an electronic mail
9 service; a message board; or a chat room;
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- 1 (2) In any territory of the United States or in the District of Columbia, or
2 between any such territory and (a) Another such territory, or
3 (b) Any State or foreign nation; or
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5 (3) Between the District of Columbia and any State, territory, or foreign
6 nation.

7 This definition does not include any nonprofit entity that would otherwise be
8 exempt from coverage under Section 5 of the Federal Trade Commission Act (15
9 U.S.C. § 45);

- 10
11 I. "Parent" includes a legal guardian;
12 J. "Person" means any individual, partnership, corporation, trust, estate,
13 cooperative, association, or other entity;
14 K. "Personal information" means individually identifiable information about an
15 individual collected online, including:
16 (1) A first and last name;
17 (2) A home or other physical address including street name and name of a city
18 or town;
19 (3) An e-mail address or other online contact information, including but not
20 limited to, an instant messaging user identifier, or a screen name that
21 reveals an individual's e-mail address;
22 (4) A telephone number;
23 (5) A Social Security number;
24 (6) A persistent identifier, such as a customer number held in a cookie or a
25 processor serial number, where such identifier is associated with
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1 individually identifiable information; or a combination of a last name or
2 photograph of the individual with other information such that the
3 combination permits physical or online contacting; or
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5 (7) Information concerning the child or the parents of that child that the
6 operator collects online from the child and combines with an identifier
7 described in this definition;

8 L. “Third party” means any person who is not:

9
10 (1) An operator with respect to the collection or maintenance of personal
11 information on the website or online service; or

12 (2) A person who provides support for the internal operations of the website
13 or online service and who does not use or disclose information protected
14 under this part for any other purpose;

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16 M. “Verifiable parental consent” means making any reasonable effort (taking into
17 consideration available technology) to ensure that before personal information is
18 collected from a child, a parent of the child:

19 (1) Receives notice of the operator’s personal information collection, use, and
20 disclosure practices; and

21 (2) Authorizes any collection, use, and/or disclosure of the personal
22 information; and
23

24 N. “Website or online service directed to children” means a commercial website or
25 online service, or portion thereof, that is targeted to children. *Provided, however,*
26 that a commercial website or online service, or a portion thereof, shall not be
27 deemed directed to children solely because it refers or links to a commercial
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1 website or online service directed to children by using information location tools,
2 including a directory, index, reference, pointer, or hypertext link. In determining
3 whether a commercial website or online service, or a portion thereof, is targeted
4 to children, the Commission will consider its subject matter, visual or audio
5 content, age of models, language or other characteristics of the website or online
6 service, as well as whether advertising promoting or appearing on the website or
7 online service is directed to children. The Commission will also consider
8 competent and reliable empirical evidence regarding audience composition;
9 evidence regarding the intended audience; and whether a site uses animated
10 characters and/or child-oriented activities and incentives.

13 13. “Covered information” means information from or about an individual consumer
14 including, but not limited to: (a) a first and last name; (b) a home or other physical
15 address, including street name and name of city or town; (c) an email address or other
16 online contact information, such as an instant messaging user identifier or a screen name;
17 (d) a telephone number; (e) a persistent identifier, such as a customer number held in a
18 “cookie,” a static Internet Protocol (“IP”) address, or processor serial number; (f)
19 nonpublic communications and content posted on Defendant’s website or within
20 Defendant’s applications; or (g) communications and content stored on a consumer’s
21 mobile device.

24 14. “Clear(ly) and prominent(ly)” shall mean:

25 A. In textual communications (*e.g.*, printed publications or words displayed on the
26 screen of a computer or mobile device), the required disclosures are of a type,
27 size, and location sufficiently noticeable for an ordinary consumer to read and
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1 comprehend them, in print that contrasts highly with the background on which
2 they appear;

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4 B. In communications disseminated orally or through audible means (*e.g.*, radio or
5 streaming audio), the required disclosures are delivered in a volume and cadence
6 sufficient for an ordinary consumer to hear and comprehend them;

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1 permanently restrained and enjoined from:

- 2 A. Failing to provide sufficient notice of the information Defendant collects online
3 from children, how it uses such information, its disclosure practices, and all other
4 content, as required by Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
5
6 B. Failing to provide direct notice to parents of what information Defendant collects
7 online from children, how it uses such information, its disclosure practices, and
8 all other required content, as required by Section 312.4(c) of the Rule, 16 C.F.R.
9 § 312.4(c);
10
11 C. Failing to obtain verifiable parental consent before any collection, use, and/or
12 disclosure of personal information from children, as required by Section 312.5 of
13 the Rule, 16 C.F.R. § 312.5(a)(1); or
14
15 D. Violating any other provision of the Rule, 16 C.F.R. Part 312, and as the Rule
16 may hereafter be amended. A copy of the Rule is attached hereto as “Appendix
17 A” and incorporated herein as if fully set forth verbatim.
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1 **IV. INJUNCTION REGARDING PRIVACY OF CONSUMER INFORMATION**

2 22. **IT IS FURTHER ORDERED** that Defendant acting directly or through any
3 corporation, subsidiary, limited liability company, division, or other device, in
4 connection with the advertising, marketing, promotion, offering for sale, or sale of any
5 product or service, in or affecting commerce, is permanently restrained and enjoined
6 from misrepresenting in any manner, expressly or by implication, the extent to which it
7 maintains and protects the privacy and confidentiality of covered information.
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9 23. **IT IS FURTHER ORDERED** that Defendant, acting directly or through any
10 corporation, subsidiary, limited liability company, division, or other device, in
11 connection with the advertising, marketing, promotion, offering for sale, or sale of any
12 product or service, in or affecting commerce, prior to any access or collection of
13 information in the user’s mobile device contacts or address book, shall:
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15 A. Clearly and prominently disclose to the user, separate and apart from any
16 “privacy policy,” “terms of use,” “blog,” “statement of values” page, or other
17 similar document, the categories of information from the user’s mobile device
18 that will be accessed and/or collected; and
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20 B. Obtain the user’s affirmative express consent to access or collect such
21 information.
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23 24. **IT IS FURTHER ORDERED** that Defendant, acting directly or through any
24 corporation, subsidiary, limited liability company, division, or other device, in
25 connection with the advertising, marketing, promotion, offering for sale, or sale of any
26 product or service, in or affecting commerce, shall, no later than the date of service of
27 this order, establish and implement, and thereafter maintain, a comprehensive privacy
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1 program that is reasonably designed to: (1) address privacy risks related to the
2 development and management of new and existing products and services for consumers;
3 and (2) protect the privacy and confidentiality of covered information. Such program,
4 the content and implementation of which must be documented in writing, shall contain
5 privacy controls and procedures appropriate to respondent's size and complexity, the
6 nature and scope of respondent's activities, and the sensitivity of the covered
7 information, including:
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- 10 A. The designation of an employee or employees to coordinate and be responsible
11 for the privacy program;
 - 12 B. The identification of reasonably foreseeable, material risks, both internal and
13 external, that could result in the respondent's unauthorized collection, use, or
14 disclosure of covered information, and an assessment of the sufficiency of any
15 safeguards in place to control these risks. At a minimum, this privacy risk
16 assessment should include consideration of risks in each area of relevant
17 operation, including, but not limited to: (1) employee training and management,
18 including training on the requirements of this order; and (2) product design,
19 development, and research;
 - 20 C. The design and implementation of reasonable privacy controls and procedures to
21 address the risks identified through the privacy risk assessment, and regular
22 testing or monitoring of the effectiveness of those privacy controls and
23 procedures;
 - 24 D. The development and use of reasonable steps to select and retain service
25 providers capable of appropriately protecting the privacy of covered information
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1 they receive from respondent, and requiring service providers by contract to
2 implement and maintain appropriate privacy protections;

3
4 E. The evaluation and adjustment of respondent's privacy program in
5 light of the results of the testing and monitoring required by subpart C, any
6 material changes to respondent's operations or business arrangements, or any
7 other circumstances that respondent knows or has reason to know may have a
8 material impact on the effectiveness of its privacy program.
9

10 25. **IT IS FURTHER ORDERED** that, in connection with its compliance with Paragraph 24
11 of this order, Defendant shall obtain initial and biennial assessments and reports
12 ("Assessments") from a qualified, objective, independent third-party professional, who
13 uses procedures and standards generally accepted in the profession. The reporting period
14 for the Assessments shall cover: (1) the first year after service of the Order for the initial
15 Assessment; and (2) each two (2) year period thereafter for twenty (20) years after
16 service of the Order for the biennial Assessments.
17

18 A. Each Assessment shall:

19 1. Set forth the specific privacy controls that Defendant has implemented and
20 maintained during the reporting period;

21 2. Explain hsb. The1h6s2 the specu5.fen appropriate to Defendant's sized and
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1 effectiveness to provide reasonable assurance to protect the privacy of
2 covered information and that the program has so operated throughout the
3 reporting period.
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5 B. Each Assessment shall be prepared and completed within sixty (60) days after the
6 end of the reporting period to which the Assessment applies by a person that has a
7 minimum of three (3) years of experience in the field of privacy and data
8 protection. All persons conducting such Assessments and preparing such reports
9 shall be approved by the Associate Director for Enforcement, Bureau of
10 Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW,
11 Washington, D.C. 20580, in his or her sole discretion.
12

13 C. Defendant shall provide the initial Assessment by overnight courier (not the U.S.
14 Postal Service) to the Associate Director for Enforcement, Bureau of Consumer
15 Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington,
16 D.C. 20580, or by email to Debrief@ftc.gov, within ten (10) days after the
17 Assessment has been prepared. All subsequent biennial Assessments shall be
18 retained by Defendant until the order is terminated and provided to the Associate
19 Director for Enforcement within ten (10) days of request.
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22 V. ORDER ACKNOWLEDGMENTS

23 26. **IT IS FURTHER ORDERED** that Defendant obtain acknowledgments of receipt of this

24 Order:

25 A. Defendant, within seven (7) days of entry of this Order, must submit to the
26 Commission an acknowledgment of receipt of this Order sworn under penalty of
27 perjury.
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B. For five (5) years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives having supervisory responsibilities relating to the collection, retention, storage, or security of covered information and all employees, agents, and representatives having supervisory responsibilities related to the operation of any website or online service subject to this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled "Compliance Reporting." Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

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- numbers, and physical, postal, email, and Internet addresses;
3. Describe the activities of each business, including the products and services offered and the means of advertising, marketing, and sales;
 4. Describe in detail whether and how Defendant is in compliance with each Section of this Order;
 5. Provide a statement setting forth in detail the criteria and process through which Defendant's websites or online services register visitors online for any activity requiring the submission of covered information, and a copy of each different version of screen or page providing or collecting registration information;

1302(8) of COPPA, 15 U.S.C. § 6501(8));

2 11. Provide a statement setting forth in detail the means provided for parents
3 to review the personal information, as defined by Definition K (Section
4 1302(8) of COPPA, 15 U.S.C. § 6501(8)), collected from their children
5 and to refuse to permit its further use or maintenance;
6

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

11 13. Provide a statement setting forth in detail the procedures used to protect
12 the confidentiality, security, and integrity of personal information, as
13 defined by Definition K (Section 1302(8) of COPPA, 15 U.S.C. §
14 6501(8)), collected from children; and
15

16 14. Provide a copy of each Order Acknowledgement obtained pursuant to this
17 Order, unless previously submitted to the Commission.

18 B. For twenty (20) years following entry of this Order, Defendant must submit a
19 compliance notice, sworn under penalty of perjury, within fourteen (14) days of
20 any change in the following: (1) any designated point of contact; or (2) the
21 structure of Defendant or any entity that Defendant has any ownership interest in
22 or directly or indirectly controls that may affect compliance obligations arising
23 under this Order, including: creation, merger, sale, or dissolution of the entity or
24 any subsidiary, parent, or affiliate that engages in any acts or practices subject to
25 this Order.
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27 C. Defendant must submit to the Commission notice of the filing of any bankruptcy
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1 petition, insolvency proceeding, or any similar proceeding by or against
2 Defendant within fourteen (14) days of its filing.

3
4 D. Any submission to the Commission required by this Order to be sworn under
5 penalty of perjury must be true and accurate and comply with 18 U.S.C. § 1746,
6 such as by concluding: “I declare under penalty of perjury under the laws of the
7 United States of America that the foregoing is true and correct. Executed
8 on:_____” and supplying the date, signatory’s full name, title (if applicable), and
9 signature.
10

11 E. Unless otherwise directed by a Commission representative in writing, all
12 submissions to the Commission pursuant to this Order must be emailed to
13 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
14 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
15 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.
16
17 The subject line must begin: FTC v. Path, Inc.

18 **VII. RECORDKEEPING**

19 28. **IT IS FURTHER ORDERED** that Defendant must create certain records for twenty
20 (20) years after entry of the Order, and retain each such record for five (5) years unless
21 otherwise specified below. Specifically, Defendant, in connection with covered
22 information, must maintain the following records:

- 23
24 A. Accounting records showing the revenues from all goods or services sold, all
25 costs incurred in generating those revenues, and the resulting net profit or loss;
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27 B. Personnel records showing, for each person providing services, whether as an
28 employee or otherwise, that person’s: name, addresses, and telephone numbers;

1 job title or position; dates of service; and, if applicable, the reason for
2 termination;

3 C. All records necessary to demonstrate full compliance with each provision of this
4 Order, including all submissions to the Commission;

5
6 D. A copy of all complaints submitted by consumers to Defendant regarding its
7 information security practices or its practices relating to the collection or retention
8 of covered information. *Provided, however,*
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1 **VIII. COMPLIANCE MONITORING**

2 29. **IT IS FURTHER ORDERED** that for the purpose of monitoring compliance with this
3 Order:

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5 A. Within fourteen (14) days of receipt of a written request from a representative of
6 the Commission, Defendant must: submit additional compliance reports or other
7 requested information, which must be sworn under penalty of perjury; appear for
8 depositions; and produce documents, for inspection and copying. The
9 Commission is also authorized to obtain discovery, without further leave of
10 Court, using any of the procedures prescribed by Federal Rules of Civil Procedure
11 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

12
13 B. For matters concerning this Order, the Commission is authorized to communicate
14 directly with Defendant. Defendant must permit representatives of the
15 Commission to interview any employee or other person affiliated with any
16 Defendant who has agreed to such an interview. The person interviewed may
17 have counsel present.

18
19 C. The Commission may use all other lawful means, including posing, through its
20 representatives, as consumers, suppliers, or other individuals or entities, to
21 Defendant or any individual or entity affiliated with Defendant, without the
22 necessity of identification or prior notice. Nothing in this Order limits the
23 Commission’s lawful use of compulsory process, pursuant to Sections 9 and 20 of
24 the FTC Act, 15 U.S.C. §§ 49, 57b-1.
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IX. RETENTION OF JURISDICTION

30. **IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for the purposes of construction, modification, and enforcement of this Order.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendant, pursuant to all the terms and conditions recited above.

Dated this 8th day of February, 2013.

UNITED STATES DISTRICT JUDGE

FOR THE FEDERAL TRADE COMMISSION:

/s/ signature on file

JAMIE E. HINE

Attorney

Division of Privacy and Identity Protection

/s/ signature on file

NITHAN SANNAPPA

Attorney

Division of Privacy and Identity Protection

/s/ signature on file

MAMIE KRESSES

Attorney

Division of Advertising Practices

/s/ signature on file

CHRISTOPHER OLSEN

Assistant Director

Division of Privacy and Identity Protection

/s/ signature on file

MANEESHA MITHAL

Associate Director

Division of Privacy and Identity Protection

Federal Trade Commission

600 Pennsylvania Avenue, NW

Mail Drop NJ-8100

Washington, D.C. 20580

FOR THE DEFENDANT, PATH, INC.:

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/s/ signature on file

DAVID MORIN
Chief Executive Officer
Path, Inc.

/s/ signature on file

TYLER NEWBY
FENWICK AND WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
415-875-2495
Attorney for Defendant Path, Inc.