

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL

consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, and issues the following Order:

### Findings

1. The Respondents are:

- a. Respondent MoviePass, Inc. is a Delaware corporation with its principal place of business at 350 Fifth Avenue, Suite 5330, New York, New York 10118. Respondent MoviePass is a subsidiary of Helios and Matheson Analytics, Inc., which acquired a controlling interest in August 2017 and more than 90 percent of the company by April 2018.
- b. Respondent Helios and Matheson Analytics, Inc. is a Delaware corporation with its principal place of business also at 350 Fifth Avenue, Suite 5330, New York, New York 10118.
- c. Respondent Mitchell Lowe is the Chief Executive Officer of Respondent MoviePass. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of Respondent MoviePass, including those relating to its advertising, marketing, public relations, cybersecurity, customer service, and the acts and practices alleged in this complaint. At all times material to this complaint, his principal office or place of business was the same as that of Respondents MoviePass and Helios.
- d. Respondent Theodore Farnsworth was Chief Executive Officer of Helios until September 2019. Individually or in concert with others, he controlled or had the authority to control, or participated in the acts and practices of Respondents MoviePass and Helios, including those relating to Respondent MoviePass's advertising, marketing, public relations, customer service, and the acts and practices alleged in this complaint. At all times material to this complaint, his principal office or place of business was the same as th

the entry of judgment and enforcement of a judgment other than a money judgment, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3), or (6) because it is an action brought by the Commission to enforce its police and regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exemption to the automatic stay.

4. The Bankruptcy Trustee is not a Respondent party to this Order and is acting solely in his fiduciary capacity as Chapter 7 trustee in the Bankruptcy Cases to bind Respondents MoviePass, Inc. and Helios and Matheson Analytics, Inc. to this Consent Agreement. The Bankruptcy Trustee's obligations, if at all, only arise if the Bankruptcy Trustee obtains authorization from the Bankruptcy Court to operate the business of such entity pursuant to 11 U.S.C. § 721, or abandon property of the estate of such entity pursuant to 11 U.S.C. § 554, before the Bankruptcy Case is closed. In the event that any obligations arise hereunder, the Bankruptcy Trustee shall have no further obligations under this Order after the Bankruptcy Case is closed, including with respect to any property the Bankruptcy Trustee abandons to effectuate the closing of any such Bankruptcy Case.
5. Notwithstanding the above, no obligations under the Consent Agreement arose by virtue of the Bankruptcy Trustee's limited operation of the MovieFone business pursuant to that certain Order of the Bankruptcy Court entered on February 26, 2020, which authorized the Bankruptcy Trustee, effective as of January 28, 2020, to continue the operation of the MovieFone business for a limited period until March 31, 2020, pursuant to 11 U.S.C. § 721.
6. The Bankruptcy Trustee has obtained approval from the Bankruptcy Court to enter into this Order and take any and all actions necessary to implement the terms and conditions of this Order applicable to Respondents MoviePass, Inc. and Helios and Matheson Analytics, Inc.
7. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

## ORDER

### Definitions

For purposes of this Order, the following definitions apply:

A. "Covered Business" means (1) Corporate Respondent; (2) any business that Corporate Respondents control, directly or indirectly; and (3) any business that Respondent Lowe controls, directly or indirectly, that collects or maintains consumers' Personal Information.

B. "Covered Incident" means any instance in which any U.S. federal, state, or local law or regulation requires Respondent to notify any U.S. federal, state, or local government entity that information collected or received, directly or indirectly, by Respondents from or about an individual consumer was, or is reasonably believed to have been, accessed or acquired

without authorization.

C. "Respondent" means all of the Individual Respondents and the Corporate Respondents, individually, collectively, or in any combination.

1. "Corporate Respondent" means MoviePass, Inc., Helios and Matheson Analytics, Inc., and their successors and assigns, *provided that*, for the purposes of Sections II-X of this Order, each of MoviePass, Inc. and Helios and Matheson Analytics, Inc., including their bankruptcy estates, are excluded from the definition of "Respondent" and "Corporate Respondent" for the period from the date of entry of this Order (at which time obligations under this Order arise) until the date the Bankruptcy Case for each entity is closed, unless the Bankruptcy Trustee obtains authorization from the Bankruptcy Court to operate the business





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to, documents reviewed, sampling and testing performed, and interviews conducted) examined to make such determinations, assessments, and findings, and explain why the evidence that the Assessor examined is (a) appropriate for such an enterprise of the Covered Business's size, complexity, and risk profile; and (b) sufficient to justify the Assessor's findings. No finding of any Assessment shall rely primarily on assessor attestations by such Covered Business's



weaknesses in, or instances of material non-compliance with, th





E. Unless otherwise directed by a Commission representative, all submissions to the Commission pursuant to Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to: Associate Director for Enforcement,

representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.

C. The Commission may use all other lawful means, including posing through its