

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UPROMISE, INC.,

Defendant.

Civil Action No. _____

**[PROPOSED] STIPULATED ORDER FOR PERMANENT INJUNCTION AND CIVIL
PENALTY JUDGMENT**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC”), filed its complaint (“Complaint”), for a permanent injunction, civil penalties, and other equitable relief in this matter, pursuant to Sections 5(l) and 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(l) and 56(a)(1). Defendant has waived service of the summons and the Complaint. Plaintiff and Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Civil Penalty (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

Findings

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant violated the Decision and Order, *In the Matter of Upromise, Inc.*, Docket No. C-4351 (“2012 FTC Order”) as a result of Defendant’s (a) inadequate notice to consumers of the data collection and data use associated with the RewardU toolbar; and

(b) inadequate third-party privacy assessment of the RewardU toolbar.

3. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.

4. Defendant waives any claim it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.

5. Defendant and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.

Definitions

For the purpose of this Order, the following definitions apply:

A. **“Defendant”** means Upromise, Inc. and its successors and assigns.

B. **“FTC Order”** means the Decision and Order issued on March 27, 2012 by the Federal Trade Commission, *In the Matter of Upromise, Inc.*, FTC No. 1023116, Docket No. C-4351, attached as Exhibit A and made a part of this Order.

Order

I. Prohibition Against Violating FTC Order

Defendant, and its officers, agents, representatives, employees, and attorneys, and all persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently enjoined from violating, directly or indirectly, through any corporation, subsidiary, division, or other device, any provision of the FTC Order.

II. Civil Penalty Judgment

Judgment in the amount of five hundred thousand dollars (\$500,000) is entered against Defendant as a civil penalty.

A. Within seven (7) days of entry of this Order, Defendant must pay the civil penalty in the form of an electronic fund transfer in accordance with the procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

B. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and will not seek the return of any assets.

C. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the FTC, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

III. Evaluation of Informed User Consent to Data Collection and Use

If Defendant is required to make a disclosure or obtain consent pursuant to Section I of the FTC Order, prior to the date on which Defendant makes the Targeting Tool available to consumers, Defendant must obtain an evaluation and report from a qualified, objective, independent third-party professional specializing in website design and user experience (“evaluator”). Defendant’s evaluator selection is subject to approval from the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission. For any disclosure or consent governed by Section I of the FTC Order, the evaluator must certify Defendant’s adherence to the FTC Order’s “clearly and prominently” disclosure requirement and “express, affirmative” consent requirement.

IV. Assessment of Targeting Tool

For any assessment conducted pursuant to Section VI of the FTC Order, Defendant must obtain advance written approval of the assessment's scope and design from the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

V. Removal of the RewardU Toolbar and Associated Cookies

Defendant must configure its systems to permanently expire any RewardU-related cookie previously placed by Defendant. Defendant must effectively notify all consumers who downloaded the RewardU toolbar to uninstall the toolbar and delete any associated cookies. Defendant's notice must explain to consumers how to perform these actions. Defendant must provide the notice, within 30 days after the date of entry of the Order:

- A. By emailing the notice to consumers at the email address they most recently provided to Upromise;
- B. By posting a notice on the RewardU page of the Upromise.com website for at least 2 years;
- C. By providing the notice to any consumer who complains or inquires about the privacy or security of the RewardU toolbar during the next 3 years.

VI. Order Acknowledgments

Defendant must obtain acknowledgments of receipt of this Order as follows:

- A. Defendant, within 7 days of entry of this Order, must submit to the FTC an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 5 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees,

agents, and representatives who participate in conduct related to the subject matter of the 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 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

VII. Compliance Reporting

Defendant must make timely submissions to the FTC as follows:

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury:

1. Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Plaintiff or FTC may use to communicate with Defendant; (b) identify all of Defendant's businesses by all of its names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business; (d) describe in detail whether and how Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the FTC.

B. For 20 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Defendant must report any change in: (a) any designated point of contact; or (b) the structure of Defendant or any entity that Defendant has any ownership interest in or

controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the FTC notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the FTC required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a FTC representative in writing, all submissions to the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Upromise, Matter No. C43501.

VIII. Recordkeeping

Defendant must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant must create and retain the following records:

A. All records necessary to demonstrate full compliance with each provision of this Order and the FTC Order, including all submissions to the FTC;

B. Accounting records showing the revenues from all goods or services sold or licensed; and

C. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination.

IX. Compliance Monitoring

For the purpose of monitoring Defendant's compliance with this Order and the FTC Order:

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

B. For matters concerning this Order, the Plaintiff and the FTC are authorized to communicate directly with Defendant. Defendant must permit representatives of the Plaintiff and the FTC to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

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

X. Retention of Jurisdiction

This Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this _____ day of _____, 2017.

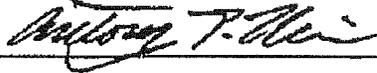
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:

<p>Of Counsel:</p> <p>FEDERAL TRADE COMMISSION</p>  <hr/> <p>MEGAN GRAY (D.C. Bar No. 478479) BRAD WINTER (D.C. Bar No. 456549) Attorneys Federal Trade Commission 600 Pennsylvania Avenue NW CC-9528 Washington, DC 20580 (202) 326-3408, mgray@ftc.gov (202) 326-2597, bwinter@ftc.gov (202) 326-3197 (fax)</p>	<p>UNITED STATES OF AMERICA</p> <p>WILLIAM WEINREB Acting United States Attorney District of Massachusetts</p> <p><i>/s/ Annapurna Balakrishna</i></p> <hr/> <p>ANNAPURNA BALAKRISHNA Assistant United States Attorney Massachusetts BBO No. 655051 (617) 748-3111 annapurna.balakrishna@usdoj.gov</p> <p>CHAD A. READLER Acting Assistant Attorney General Civil Division</p> <p>MICHAEL S. BLUME Director, Consumer Protection Branch</p> <p>ANDREW CLARK Assistant Director Consumer Protection Branch</p> <p><i>/s/ Jocelyn C. Hines</i></p> <hr/> <p>JOCELYN HINES Trial Attorney United States Department of Justice Consumer Protection Branch Pennsylvania Bar No. 321017 P.O. Box 386 Washington, DC 20044 (202) 598-2647 Jocelyn.C.Hines@usdoj.gov</p>
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FOR DEFENDANT:

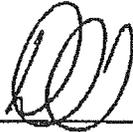


Date: 8/24/2016

Antony Kim,
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Counsel for Upromise, Inc.

UPROMISE, INC.



Date: 8/24/2016

David O'Connell,
President, Upromise, Inc.

Exhibit A
(FTC Order)

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill**

In the Matter of)
)
)
UPROMISE, INC.,)
 a corporation.)
)
_____)

DOCKET NO. C-4351

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the Respondent with violation of the Federal Trade Commission Act; and

The Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Upromise, Inc., is a Delaware corporation with its principal office at 95 Wells Avenue, Suite 160, Newton, Massachusetts 02459.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. “Affected Consumers” shall mean persons who, prior to the date of issuance of this order, downloaded and installed the TurboSaver Toolbar and had the Personalized Offers feature enabled.
2. “Clearly and prominently” shall mean as follows:
 - A. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer or a mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
 - B. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - C. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (A) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;
 - D. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (A) of this definition, in addition to any audio or video presentation of them; and
 - E. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to,

inconsistent with, or in mitigation of the disclosures used in any communication of them.

3. “Collected Information” shall mean any information or data transmitted from a computer by the TurboSaver Toolbar as a result of the Personalized Offers feature being enabled prior to the date of issuance of this order to any computer server owned by, operated by, or operated for the benefit of respondent.
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. “Computer” shall mean any desktop or laptop computer, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content and to play any digital audio, visual, or audiovisual content.
6. “Covered Online Service” shall mean any product or service using or incorporating a Targeting Tool. Covered Online Service includes, but is not limited to, the TurboSaver Toolbar with the Personalized Offers feature enabled.
7. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license number or other government-issued identification number; (g) prescription information, such as medication and dosage, and prescribing physician name, address, and telephone number, health insurer name, insurance account number, or insurance policy number; (h) a bank account, debit card, or credit card account number; (i) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; (j) a biometric record; or (k) any information that is combined with any of (a) through (j) above.
8. “Personalized Offers feature” shall mean the component of the TurboSaver Toolbar that Upromise has offered under the name of “Personalized Offers.”
9. “Respondent” shall mean Upromise, Inc., and its successors and assigns, and its officers, agents, representatives, and employees.
10. “Targeting Tool” shall mean any software program or application distributed by or on behalf of respondent that is installed on a consumer's computer, whether as a standalone product or as a feature of another product, and used by or on behalf

of respondent to record or transmit information about any activity occurring on that computer involving the computer's interactions with websites, services, applications, or forms, unless (a) the activity involves transmission of information related to the configuration of the software program or application itself; (b) the activity involves a consumer's interactions with respondent's websites, services, applications, and/or forms; or (c) the activity involves a consumer's interactions with respondent's member merchants and that information is collected, retained, or used only as necessary for the purpose of providing the consumer's reward service benefits for transactions involving those merchants.

The TurboSaver Toolbar when configured to collect consumer data, for example, with the Personalized Offers feature enabled, is a Targeting Tool.

11. "Third party" shall mean any individual or entity other than respondent, except that a third party shall not include a service provider of respondent that:
 - A. only uses or receives personal information collected by or on behalf of respondent for and at the direction of the respondent and no other individual or entity,
 - B. does not disclose the data, or any individually identifiable information derived from such data, to any individual or entity other than respondent, and
 - C. does not use the data for any other purpose.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Targeting Tool, in or affecting commerce, shall,

- A. Prior to the consumer enabling (by downloading, installing, or otherwise activating) any Targeting Tool:
 1. Clearly and prominently, and prior to the display of and on a separate screen from, any "end user license agreement," "privacy policy," "terms of use" page, or similar document, disclose:
 - a) all the types of data that the Targeting Tool will collect, including but not limited to, if applicable, a statement that the data includes transactions or communications between the consumer and third parties in secure sessions, interactions with shopping baskets, application forms, online accounts, web-based email

accounts, or search engine pages, and if the information includes personal, financial or health information.

b) how the data is used, including if the data is shared with a third party, other than as reasonably necessary: (i) to comply with applicable law, regulation, or legal process, (ii) to enforce respondent's terms of use, or (iii) to detect, prevent, or mitigate fraud or security vulnerabilities.

2. Obtain express affirmative consent from the consumer to the enabling (by downloading, installing, or otherwise activating) and to the collection of data.

B. For those TurboSaver Toolbars installed by consumers before the date of issuance of this order, prior to (1) enabling data collection through any Targeting Tool or (2) otherwise making any material change from stated practices about collection or sharing of personal information through the TurboSaverToolbar, provide the notice and obtain the express consent described in subparts A(1) and (2) of this Part.

II.

IT IS FURTHER ORDERED that respondent shall:

A. Notify Affected Consumers: a) that they have or had the Personalized Offers feature enabled, and that from 2005 through January 2010 use of this feature resulted in collection and transmission of data to or on behalf of respondent, listing the categories of personal information that were, or could have been, transmitted; and b) how to permanently disable the Personalized Offers feature and uninstall the TurboSaver Toolbar. Notification shall be by each of the following means:

1. Beginning within thirty (30) days after the date of service of this order and for two (2) years after the date of service of this order, posting of a clear and prominent notice on its website.
2. Beginning within thirty (30) days after the date of service of this order and for three (3) years after the date of service of this order, informing Affected Consumers who complain or inquire about the privacy or security of the TurboSaver Toolbar.
3. Within sixty (60) days after the date of service of this order, providing direct, clear and prominent notice to Affected Consumers who have the Personalized Offers feature enabled.

- B. Provide prompt, toll-free, telephonic and electronic mail support to help Affected Consumers disable the Personalized Offers feature and, if requested, uninstall the TurboSaver Toolbar.

III.

IT IS FURTHER ORDERED that respondent shall, within five (5) days after the date of service of this order, delete or destroy, or cause to be deleted or destroyed, all Collected Information in respondent's custody or control, unless otherwise directed by a representative of the Commission.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with its advertising, marketing, promotion, or offering of any service or product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the extent to which respondent maintains and protects the security, privacy, confidentiality, or integrity of any personal information collected from or about consumers, unless the representation is true, and non-misleading.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, website, or other device, in connection with its advertising, marketing, promotion, or offering of any product or service, in or affecting commerce, shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of personal information collected from or about consumers. This section may be satisfied through the review and maintenance of an existing program so long as that program fulfills the requirements set forth herein. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity and the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. The designation of an employee or employees to coordinate and be accountable for the information security program;
- B. The identification of material internal and external risks that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of personal information and an assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1)

employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, account takeovers, or other systems failures;

- C. The design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;
- D. The development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information such service providers receive from respondent or obtain on respondent's behalf, and the requirement, by contract, that such service providers implement and maintain appropriate safeguards; and
- E. The evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by subpart C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

VI.

IT IS FURTHER ORDERED that, in connection with its compliance with Part V of this order, for any Covered Online Service respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. Professionals qualified to prepare such Assessments shall be: a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. Set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. Explain how such safeguards are appropriate to respondent's size and complexity, and the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers;
- C. Explain how the safeguards that have been implemented meet or exceed the protections required by Part V of this order; and
- D. Certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

VII.

IT IS FURTHER ORDERED that respondent shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements, labeling, packaging and promotional material containing the representation;
- B. All materials relied upon in disseminating the representation;
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- D. All acknowledgments of receipt of this order, obtained pursuant to Part IX.

Moreover, for a period of three (3) years after the date of preparation of each Assessment required under Part VI of this order, respondent shall maintain and upon request make available to the Commission for inspection and copying all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, for the compliance period covered by such Assessment.

VIII.

IT IS FURTHER ORDERED that respondent shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Commission's complaint, cooperate in good faith with the Commission and appear at such places and times as the Commission shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission, respondent shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the complaint, without the service of a subpoena.

IX.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to: (1) all current and future principals, officers, and directors; and (2) all current and future managers who have responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order, with any electronic signatures complying with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.* Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

X.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in respondent that may affect compliance obligations arising under this order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary (including an LLC), parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in respondent's name or address. *Provided, however,* that with respect to any proposed change about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.

Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line FTC v. Upromise. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

XI.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this order, and at such other times as the FTC may require, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports.

XII.

This order will terminate on December 31, 2031, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part of this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that this order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.


Donald S. Clark
Secretary

SEAL:

ISSUED: March 27, 2012