UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **MOVIEPASS, INC., a corporation,** **HELIOS AND MATHESON ANALYTICS, INC., a corporation,** **MITCHELL LOWE, individually and as an officer of MOVIEPASS, INC., and** **THEODORE FARNSWORTH, individually and as an officer of HELIOS AND MATHESON ANALYTICS, INC.**	**FILE NO. 192 3000** **AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission ("Commission") has conducted an investigation of certain acts and practices of MoviePass, Inc., a corporation, Helios and Matheson Analytics, Inc., a corporation, Mitchell Lowe, individually and as an officer of MoviePass, Inc., and Theodore Farnsworth, individually and as an officer of Helios and Matheson Analytics, Inc. (collectively "Proposed Respondents"). The Commission's Bureau of Consumer Protection ("BCP") has prepared a draft of an administrative Complaint ("draft Complaint"). BCP and Proposed Respondents, individually or through their duly authorized officers enter into this Agreement Containing Consent Order ("Consent Agreement") to resolve the allegations in the attached draft Complaint through a proposed Decision and Order to present to the Commission, which is also attached and made a part of this Consent Agreement.

IT IS HEREBY AGREED by and between Proposed Respondents and BCP, that:

1. The Proposed 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. ("Helios") 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, data security, 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 the 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 that of Respondents MoviePass and Helios.

2. Proposed Respondents neither admit nor deny any of the allegations in the Complaint, except as specifically stated in the Decision and Order. Only for purposes of this action, Proposed Respondents admit the facts necessary to establish jurisdiction.

3. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order issued pursuant to this Consent Agreement.

4. This Consent Agreement will not become part of the public record of the proceeding unless and until it is accepted by the Commission. If the Commission accepts this Consent Agreement, it, together with the draft Complaint, will be placed on the public record for 30 days and information about them publicly released. Acceptance does not constitute final approval, but it serves as the basis for further actions leading to final disposition of the matter. Thereafter, the Commission may either withdraw its acceptance of this Consent Agreement and so notify each Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding, which may include an Order. *See* Section 2.34 of the Commission's Rules, 16 C.F.R. § 2.34 ("Rule 2.34").

5. If this agreement is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to Rule 2.34, the Commission may, without further notice to Proposed Respondents: (1) issue its Complaint corresponding in form and substance with the attached draft Complaint and its Decision and Order; and (2) make information about them public. Proposed Respondents agree that service of the Order may be effected by its

publication on the Commission's website (ftc.gov), at which time the Order will become final. *See* Rule 2.32(d). Proposed Respondents waive any rights they may have to any other manner of service. *See* Rule 4.4.

6. When final, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Commission orders.

7. The Complaint may be used in construing the terms of the Decision and Order. No agreement, understanding, representation, or interpretation not contained in the Decision and Order or in this Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

8. Each Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date that Proposed Respondent signs this Consent Agreement. Proposed Respondents understand that they may be liable for civil penalties and other relief for each future violation of the Decision and Order after it becomes final.

MOVIEPASS, INC.

By:_____
Alan Nisselson
Trustee

Date:_____

HELIOS AND MATHESON ANALYTICS, INC.

By:_____
Alan Nisselson
Trustee

Date:_____

MITCHELL LOWE

By: _____
Mitchell Lowe, individually and as
an officer of MoviePass, Inc.

Date:_____

THEODORE FARNSWORTH

By: _____
Theodore Farnsworth, individually and
as an officer of Helios and Matheson Analytics, Inc.

Date:_____

_____
Leslie S. Barr
Windels Marx Lane & Mittendorf, LLP
Attorney for Bankruptcy Trustee

_____
Jason Gonzalez
Nixon Peabody LLP
Attorney for Mitchell Lowe and Theodore Farnsworth

FEDERAL TRADE COMMISSION

By: _____
Zachary A. Keller
Thomas B. Carter
Attorneys, Southwest Region

APPROVED:

_____
Dama J. Brown
Regional Director
Southwest Region

_____
Andrew M. Smith
Director
Bureau of Consumer Protection

192 3000

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman**
Noah Joshua Phillips
Rohit Chopra
Christine S. Wilson

In the Matter of **MOVIEPASS, INC., a corporation,** **HELIOS AND MATHESON ANALYTICS, INC., a corporation,** **MITCHELL LOWE, individually and as an officer of MOVIEPASS, INC., and** **THEODORE FARNSWORTH, individually and as an officer of HELIOS AND MATHESON ANALYTICS, INC.**	**DECISION AND ORDER** **DOCKET NO. C-**

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission's Bureau of Consumer Protection ("BCP") prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Federal Trade Commission Act.

Respondents and BCP thereafter executed an Agreement Containing Consent Order ("Consent Agreement"). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission's Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and

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, makes the following Findings, 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, data security, 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 the 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 that of Respondents MoviePass and Helios.

2. On January 28, 2020, Respondents MoviePass, Inc. and Helios and Matheson Analytics, Inc. filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. 701 *et seq.*, in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). *See In re MoviePass, Inc.*, Case No. 20-10244-smb (Bankr. S.D.N.Y. Jan. 28, 2020); *In re Helios and Matheson Analytics, Inc.*, Case No. 20-10242-smb (Bankr. S.D.N.Y. Jan. 28, 2020) ("Bankruptcy Cases"). Alan Nisselson of the firm Windels, Marx, Lane & Mittendorf, LLP was appointed as the trustee ("Bankruptcy Trustee").

3. If the Bankruptcy Cases are pending as of the date of entry of this Order, then this action against Respondents MoviePass, Inc. and Helios and Matheson Analytics, Inc., including

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 or a 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 arise, if at all, only 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 abandons 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 this 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 Respondents; (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 Respondents 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. "**Respondents**" means all of the Individual Respondents and the Corporate Respondents, individually, collectively, or in any combination.

1. "**Corporate Respondents**" 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 "Respondents" and "Corporate Respondents" 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 such entity is closed, unless the Bankruptcy Trustee obtains authorization from the Bankruptcy Court to operate the business of such entity pursuant to 11 U.S.C. § 721 or abandons property of the estate of such entity pursuant to 11 U.S.C. § 554 before the Bankruptcy Case is closed, in which case Sections II-X of this Order shall apply to such entity as of the date such an event occurs.

2. "**Individual Respondents**" means Mitchell Lowe and Theodore Farnsworth.

D. "**Personal Information**" means individually identifiable information from or about an individual consumer, including:

1. First and last name;

2. Home or other physical address, including street name and name of city or town, or other information about the location of the individual, including but not limited to fine or coarse location or GPS coordinates;

3. Email address;

4. Telephone number;

5. Date of birth;

6. Social Security number;

7. Other government-issued identification numbers, such as a driver's license number, military identification number, passport number, or other personal identification number;

8. Financial institution account number;

9. Credit or debit card information; or

10. Authentication credentials, such as a username and password.

I. PROHIBITION AGAINST MISREPRESENTATIONS

IT IS ORDERED that Respondents, Respondents' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with advertising, promotion, offering for sale, or sale of any product or service, are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

A. That the service will allow consumers to view one movie per day at their local movie theaters;

B. That the service will allow consumers to view any movie, in any theater, at any time;

C. The total costs to purchase, receive, or use, and the quantity of, any good or service that is the subject of the sales offer;

D. All material restrictions, limitations, or conditions to purchase, receive, or use the product or service that is subject of the sales offer;

E. That Respondents will take reasonable administrative technical, physical, or managerial measures to protect consumers' Personal Information from unauthorized access;

F. The extent to which Respondents otherwise protect the privacy, security, availability, confidentiality, or integrity of Personal Information; or

G. Any material fact.

II. MANDATED INFORMATION SECURITY PROGRAM

IT IS FURTHER ORDERED that each Covered Business shall not transfer, sell, share, collect, maintain, or store Personal Information unless it establishes and implements, and thereafter maintains, a comprehensive information security program ("Information Security Program") that protects the security, confidentiality, and integrity of Personal Information. To satisfy this requirement, each Covered Business must, at a minimum:

A. Document in writing the content, implementation, and maintenance of the Information Security Program;

B. Provide the written program and any evaluations thereof or updates thereto to its board of directors or equivalent governing body or, if no such board or equivalent governing body exists, to a senior officer responsible for its Information Security Program at least once

every twelve (12) months and promptly (not to exceed thirty (30 days) after a Covered Incident;

C. Designate a qualified employee or employees to coordinate, oversee, and be responsible for the Information Security Program;

D. Assess and document, at least once every twelve (12) months and promptly (not to exceed thirty (30 days) following a Covered Incident, internal and external risks to the security, confidentiality, or integrity of Personal Information that could result in the (1) unauthorized collection, maintenance, use, or disclosure of, or provision of access to, Personal Information; or the (2) misuse, loss, theft, alteration, destruction, or other compromise of such information;

E. Design, implement, maintain, and document safeguards each Covered Business identifies that control for the internal and external risks to the security, confidentiality, or integrity of Personal Information identified in response to sub-Provision II.D. Each safeguard must be based on the volume and sensitivity of the Personal Information that is at risk, and the likelihood that the risk could be realized and result in the (1) unauthorized collection, maintenance, use, or disclosure of, or provision of access to, Personal Information; or the (2) misuse, loss, theft, alteration, destruction, or other compromise of such information. Such safeguards must also include:

1. Training of all its employees, at least once every twelve (12) months, on how to safeguard Personal Information;

2. Technical measures to monitor of all of its networks and all systems and assets within those networks to identify data security events, including unauthorized attempts to exfiltrate Personal Information from those networks; and

3. Data access controls for all databases storing Personal Information, including by, at a minimum, (a) restricting inbound connections to approved IP addresses, (b) requiring authentication to access them, and (c) limiting employee access to what is needed to perform that employee's job function;

F. Assess, at least once every twelve (12) months and promptly (not to exceed thirty (30) days) following a Covered Incident, the sufficiency of any safeguards in place to address the internal and external risks to the security, confidentiality, or integrity of Personal Information, and modify the Information Security Program based on the results;

G. Test and monitor the effectiveness of the safeguards at least once every twelve (12) months and promptly (not to exceed thirty (30) days) following a Covered Incident, and modify the Information Security Program based on the results. Such testing and monitoring must include vulnerability testing of each of the Covered Business's networks once every four months and promptly (not to exceed thirty (30) days) after a Covered Incident, and penetration testing of each of the Covered Business's networks at least once every twelve (12) months and promptly (not to exceed thirty (30) days) after a Covered Incident;

H. Select and retain service providers capable of safeguarding Personal Information they access through or receive from each Covered Business, and contractually require service providers to implement and maintain safeguards sufficient to address the internal and external risks to the security, confidentiality, or integrity of Personal Information; and

I. Evaluate and adjust the Information Security Program in light of any changes to its operations or business arrangements, a Covered Incident, new or more efficient technological or operational methods to control for the risks identified in Provision III.D of this Order, or any other circumstances that any such Covered Business knows or has reason to know may have an impact on the effectiveness of the Information Security Program or any of its individual safegaurds. At a minimum, each Covered Business must evaluate the Information Security Program at least once every twelve (12) months and modify the Information Security Program based on the results.

III. INFORMATION SECURITY ASSESSMENTS BY A THIRD PARTY

IT IS FURTHER ORDERED that, in connection with compliance with Provision II.B of this Order titled Mandated Information Security Program, Respondents must obtain initial and biennial assessments ("Assessments"):

A. The Assessments must be obtained from a qualified, objective, independent third-party professional ("Assessor"), who: (1) uses procedures and standards generally accepted in the profession; (2) conducts an independent review of the Information Security Program; (3) retains all documents relevant to each Assessment for five years after completion of such Assessment, and (4) will provide such documents to the Commission within ten (10) days of receipt of a written request from a representative of the Commission. No documents may be withheld on the basis of a claim of confidentiality, proprietary or trade secrets, work product protection, attorney client privilege, statutory exemption, or any similar claim.

B. For each Assessment, any such Respondent must provide the Associate Director for Enforcement for the Bureau of Consumer Protection at the Federal Trade Commission with the name, affiliation, and qualifications of the proposed Assessor, whom the Associate Director shall have the authority to approve in her or his sole discretion.

C. The reporting period for the Assessments must cover: (1) the first 180 days after the issuance date of the Order for the initial Assessment; and (2) each two-year period thereafter for twenty (20) years after issuance of the Order for the biennial Assessments.

D. Each Assessment must, for the entire assessment period: (1) determine whether such Covered Business has implemented and maintained the Information Security Program required by Provision II of this Order, titled Mandated Information Security Program; (2) assess the effectiveness of such Covered Business's implementation and maintenance of sub-Provisions II.A—I; (3) identify any gaps or weaknesses in, or instances of material noncompliance with, the Information Security Program; (4) address the status of gaps or weaknesses in, or instances of material non-compliance with, the Information Security Program that wre identified in any prior Assessment required by this Order; and (5) identify specific evidence (including, but not limited

to, documents reviewed, sampling and testing performed, and interviews conducted) examined to make such determinations, assessments, and identifications, and explain why the evidence that the Assessor examined is (a) appropriate for assessing 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 assertions or attestations by such Covered Business's management. The Assessment must be signed by the Assessor, state that the Assessor conducted an independent review of the Information Security Program and did not rely primarily on assertions or attestations by such Covered Business's management, and state the number of hours that each member of the assessment team worked on the Assessment. To the extent that such Covered Business revises, updates, or adds one or more safeguards required under Provision II of this Order during an Assessment period, the Assessment must assess the effectiveness of the revised, updated, or added safeguard(s) for the time period in which it was in effect, and provide a separate statement detailing the basis for each revised, updated, or additional safeguard.

E. Each Assessment must be completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Unless otherwise directed by a Commission representative in writing, such Respondent must submit the initial Assessment to the Commission within ten (10) days after the Assessment has been completed via email to DEbrief@ftc.gov or 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, "In re MoviePass, Inc., FTC File No. 1923000." All subsequent biennial Assessments must be retained by Respondents until the order is terminated and provided to the Associate Director for Enforcement within ten days of request.

IV. COOPERATION WITH THIRD-PARTY INFORMATION SECURITY ASSESSOR

IT IS FURTHER ORDERED that each Covered Business, whether acting directly or indirectly, in connection with any Assessment required by Provision III of this Order titled Information Security Assessments by a Third Party, must:

A. Provide or otherwise make available to the Assessor all information and material in its possession, custody, or control that is relevant to the Assessment for which there is no reasonable claim of privilege;

B. Provide or otherwise make available to the Assessor information about its network(s) and all of its IT assets so that the Assessor can determine the scope of the Assessment, and visibility to those portions of the network(s) and IT assets deemed in scope; and

C. Disclose all material facts to the Assessor, and not misrepresent in any manner, expressly or by implication, any fact material to the Assessor's: (1) determination of whether each Covered Business subject to Provisions II and III of this Order has implemented and maintained the Information Security Program required by Provision II of this Order, titled Mandated Information Security Program; (2) assessment of the effectiveness of the implementation and maintenance of sub-Provisions II.A—I; or (3) identification of any gaps or

weaknesses in, or instances of material non-compliance with, the Information Security Program.

V. COVERED INCIDENT REPORTS

IT IS FURTHER ORDERED that Respondents, for any Covered Business, within thirty (30) days after discovery of a Covered Incident must submit a report to the Commission. The report must include, to the extent possible:

A. The date, estimated date, or estimated date range when the Covered Incident occurred;

B. A description of the facts relating to the Covered Incident, including the causes of the Covered Incident, if known;

C. A description of each type of information that triggered the notification obligation to the U.S. federal, state, or local government entity;

D. The number of consumers whose information triggered the notification obligation to the U.S. federal, state, or local government entity;

E. The acts that the Covered Business has taken to date to remediate the Covered Incident and protect Personal Information from further exposure or access, and protect affected individuals from identity theft or other harm that may result from the Covered Incident; and

F. A representative copy of any materially different notice sent by the Covered Business to consumers or to any U.S. federal, state, or local government entity.

Unless otherwise directed by a Commission representative in writing, all Covered Incident reports to the Commission 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, "*In re MoviePass, Inc., et al.*, FTC File No. 1923000."

VI. ANNUAL CERTIFICATION

IT IS FURTHER ORDERED that each Covered Business must:

A. One year after the issuance date of this Order, and each year thereafter, provide the Commission with a certification from a senior corporate manager, or if no such senior corporate manager exists, a senior officer, of each Covered Business responsible for such Covered Business's Information Security Program that: (1) the Covered Business has established, implemented, and maintained the requirements of this Order; (2) the Covered Business is not aware of any material non-compliance that has not been (a) corrected or (b) disclosed to the Commission; and (3) includes a brief description of all Covered Incidents during the certified period. The certification must be based on the personal knowledge of the senior

corporate manager, senior officer, or subject matter experts upon whom the senior corporate manager or senior officer reasonably relies in making the certification.

B. Unless otherwise directed by a Commission representative in writing, submit all annual certifications to the Commission pursuant to this Order via email to DEbrief@ftc.gov or 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, "In re *MoviePass, Inc., et al*., FTC File No. 1923000."

VII. ACKNOWLEDGMENTS OF THE ORDER

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 20 years after the issuance date of this Order, each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is the majority owner or controls directly or indirectly, and each Corporate Respondent, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all 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 Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date 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 a Respondent delivered a copy of this Order, that Respondent must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

VIII. COMPLIANCE REPORTS AND NOTICES

IT IS FURTHER ORDERED that Respondents make timely submissions to the Commission:

A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:

1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission, may use to communicate with Respondent; (b) identify all of that Respondent's businesses by all of their names, telephone

numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Respondent (which Individual Respondents must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order; and (e) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

2. Additionally, each Individual Respondent must: (a) identify all his telephone numbers and all his physical, postal, email and Internet addresses, including all residences; (b) identify all his business activities, including any business for which such Respondent performs services whether as an employee or otherwise and any entity in which such Respondent has any ownership interest; and (c) describe in detail such Respondent's involvement in each such business activity, including title, role, responsibilities, participation, authority, control, and any ownership.

B. Each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: 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.

2. Additionally, each Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which such Respondent performs services whether as an employee or otherwise and (ii) any entity in which such Respondent has any ownership interest and over which Respondents have direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.

C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 14 days of its filing.

D. Any submission to the Commission 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 Commission representative in writing, all submissions to the Commission 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: *In re MoviePass, Inc., et al.*, FTC File No. 1923000.

IX. RECORDKEEPING

IT IS FURTHER ORDERED that Respondents must create certain records for 20 years after the issuance date of the Order, and retain each such record for 5 years. Specifically, each Corporate Respondent, in connection with any conduct related to the subject matter of the Order, and each Individual Respondent for any business that such Respondent, individually or collectively with any other Respondents, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. Accounting records showing the revenues from all goods or services sold, the costs incurred in generating those revenues, and resulting net profit or loss;

B. Personnel records showing, for each person providing services in relation to any aspect of the Order, 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;

C. Copies or records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;

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

E. A copy of each unique advertisement or other marketing material making a representation subject to this Order.

X. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit

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

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Individual Respondents, pursuant to Section 604(2) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(2).

XI. ORDER EFFECTIVE DATES

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Provision in this Order that terminates in less than 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 Provision.

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 Provision as though the complaint had never been filed, except that the 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.

April J. Tabor
Secretary

SEAL:
ISSUED: