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JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
NUTRACLICK, LLC, *et al.*,  
  
Defendants.

Case No.: CV 20-8612-DMG (JPRx)

**STIPULATED FINAL  
ORDER FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF [4]**

Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter pursuant to Sections 5(a), 5(m)(1)(A), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 56(a), and 57b; Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105; and Section 5 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404. The Commission and Defendants stipulate to entry of this Stipulated Final Order for

1 Permanent Injunction and Other Equitable Relief to resolve all matters in dispute  
2 in this action between them.

3 THEREFORE, IT IS ORDERED as follows:  
4

5 **FINDINGS**

- 6 1. This Court has jurisdiction over this matter.
- 7 2. The Complaint charges that Defendants violated Section 4 of ROSCA, 15  
8 U.S.C. § 8403, and the Telemarketing Sales Rule (“TSR”), 16 C.F.R.  
9 § 310.3(a)(1)(vii), by charging consumers for products sold both on the internet  
10 and by phone through a Negative Option Feature without first clearly and  
11 conspicuously disclosing that consumers were required to call Defendant  
12 NutraClick, LLC one day prior to the end of consumers’ “free trial” to prevent  
13 recurring charges.
- 14 3. Defendants neither admit nor deny any of the allegations in the Complaint,  
15 except as specifically stated in this Order. Only for purposes of this action,  
16 Defendants admit the facts necessary to establish jurisdiction.
- 17 4. Defendants waive any claim that they may have under the Equal Access to  
18 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
19 the date of this Order, and agree to bear their own costs and attorney fees.
- 20 5. Defendants waive all rights to appeal or otherwise challenge or contest the  
21 validity of this Order.  
22

23 **DEFINITIONS**

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

- 25 A. **“Corporate Defendant”** means NutraClick, LLC and its successors and  
26 assigns.  
27

1 B. **“Defendants”** means Corporate Defendant and both Individual  
2 Defendants, individually, collectively, or in any combination.

3 C. **“Individual Defendants”** means Daniel Wallace and Patrick Carroll.

4 D. **“Negative Option Feature”** means, in an offer or agreement to sell or  
5 provide any good or service, a provision under which the consumer’s silence or  
6 failure to take affirmative action to reject a good or service or to cancel the  
7 agreement is interpreted by the seller or provider as acceptance or continuing  
8 acceptance of the offer.

9 E. **“2016 Order”** means the Order for Permanent Injunction and Monetary  
10 Judgment in *FTC v. NutraClick, LLC*, No. CV 16-6819-DMG (JPRx), entered on  
11 September 20, 2016.

12 **ORDER**

13 **I. BAN ON NEGATIVE OPTION FEATURES**

14 IT IS THEREFORE ORDERED that Defendants, whether acting directly  
15 or through an intermediary, are permanently restrained and enjoined from  
16 promoting or offering for sale any good or service with a Negative Option  
17 Feature.  
18

19 **II. PROHIBITION AGAINST MISREPRESENTATIONS**

20 IT IS FURTHER ORDERED that Defendants, their officers, agents,  
21 employees, and attorneys, and all other persons in active concert or participation  
22 with any of them, who receive actual notice of this Order, whether acting directly  
23 or indirectly, in connection with promoting or offering for sale any good or  
24 service, are permanently restrained and enjoined from misrepresenting or  
25 assisting others in misrepresenting, expressly or by implication:  
26

1 A. The date on which a consumer will be charged for, or shipped, a good or  
2 service;

3 B. Any material aspect of the nature or terms of a refund, cancellation,  
4 exchange, or repurchase policy for the good or service; or

5 C. Any other material fact.

6 **III. 2016 ORDER SUPERSEDED IN PART**

7 IT IS FURTHER ORDERED that this Order supersedes the 2016 Order,  
8 except as to the Findings and Sections V-VII thereof (“Prohibitions on Violating  
9 the Restore Online Shoppers’ Confidence Act,” “Monetary Judgment,” and  
10 “Additional Monetary Provisions”).

11 **IV. ORDER ACKNOWLEDGMENTS**

12 IT IS FURTHER ORDERED that Defendants obtain acknowledgments of  
13 receipt of this Order:

14 A. Each Defendant, within 7 days of entry of this Order, must submit to the  
15 Commission an acknowledgment of receipt of this Order sworn under penalty of  
16 perjury.

17 B. For 5 years after entry of this Order, each Individual Defendant for any  
18 business that such Defendant, individually or collectively with any other  
19 Defendants, is the majority owner or controls directly or indirectly, and the  
20 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,  
21 officers, directors, and LLC managers and members; (2) all employees having  
22 managerial responsibilities for conduct related to the subject matter of this Order  
23 and all agents and representatives who participate in conduct related to the subject  
24 matter of this Order; and (3) any business entity resulting from any change in  
25 structure as set forth in the Section titled Compliance Reporting. Delivery must  
26

1 occur within 7 days of entry of this Order for current personnel. For all others,  
2 delivery must occur before they assume their responsibilities.

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

6 **V. COMPLIANCE REPORTING**

7 IT IS FURTHER ORDERED that Defendants make timely submissions to  
8 the Commission:

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

- 11 1. Each Defendant must: (a) identify the primary physical, postal, and  
12 email address and telephone number, as designated points of contact,  
13 which representatives of the Commission may use to communicate  
14 with Defendant; (b) identify all of that Defendant's businesses by all  
15 of their names, telephone numbers, and physical, postal, email, and  
16 internet addresses; (c) describe the activities of each business,  
17 including the goods and services offered, the means of advertising,  
18 marketing, and sales, and the involvement of any other Defendant  
19 (which Individual Defendant must describe if they know or should  
20 know due to their own involvement); (d) describe in detail whether  
21 and how that Defendant is in compliance with each Section of this  
22 Order; and (e) provide a copy of each Order Acknowledgment  
23 obtained pursuant to this Order, unless previously submitted to the  
24 Commission.  
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1 interest, and identify the name, physical address, and any internet  
2 address of the business or entity.

3 C. Each Defendant must submit to the Commission notice of the filing of any  
4 bankruptcy petition, insolvency proceeding, or similar proceeding by or against  
5 such Defendant within 14 days of its filing.

6 D. Any submission to the Commission required by this Order to be sworn  
7 under penalty of perjury must be true and accurate and comply with 28 U.S.C. §  
8 1746, such as by concluding: “I declare under penalty of perjury under the laws  
9 of the United States of America that the foregoing is true and correct. Executed  
10 on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and  
11 signature.

12 E. Unless otherwise directed by a Commission representative in writing, all  
13 submissions to the Commission pursuant to this Order must be emailed to  
14 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:  
15 Associate Director for Enforcement, Bureau of Consumer Protection, Federal  
16 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The  
17 subject line must begin: *FTC v. NutraClick, LLC, X160052*.  
18

## 19 VI. RECORDKEEPING

20 IT IS FURTHER ORDERED that Defendant must create certain records  
21 for 15 years after entry of the Order, and retain each such record for 5 years.  
22 Specifically, Defendant must create and retain the following records:

- 23 A. accounting records showing the revenues from all goods or services sold;  
24 B. personnel records showing, for each person providing services, whether as  
25 an employee or otherwise, that person’s: name; addresses; telephone numbers;  
26

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

3 C. records of all consumer complaints and refund requests, whether received  
4 directly or indirectly, such as through a third party, and any response, all of which  
5 must be retrievable by date and by the consumer's name, telephone number, or  
6 billing information;

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

9 E. a copy of each unique advertisement or other marketing material.

## 10 **VII. COMPLIANCE MONITORING**

11 **IT IS FURTHER ORDERED** that, for the purpose of monitoring  
12 Defendants' compliance with this Order, including any failure to transfer any  
13 assets as required by this Order:

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

21 B. For matters concerning this Order, the Commission is authorized to  
22 communicate directly with each Defendant. Defendants must permit  
23 representatives of the Commission to interview any employee or other person  
24 affiliated with any Defendant who has agreed to such an interview. The person  
25 interviewed may have counsel present.  
26



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

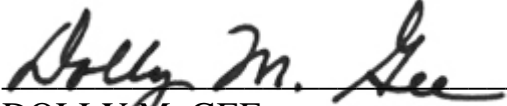
7 D. Upon written request from a representative of the Commission, any  
8 consumer reporting agency must furnish consumer reports concerning Individual  
9 Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15  
10 U.S.C. § 1681b(a)(1).

11 **VIII. RETENTION OF JURISDICTION**

12 IT IS FURTHER ORDERED that this Court retains jurisdiction of this  
13 matter for purposes of construction, modification, and enforcement of this Order.  
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15 **IT IS SO ORDERED.**

16 DATED: September 30, 2020

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19 DOLLY M. GEE  
20 UNITED STATES DISTRICT JUDGE  
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