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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PHILIP FLORA,

Defendant.

Case No. SACV 13-00381 AG (JEMx)

~~Proposed~~
FINAL ORDER FOR PERMANENT
INJUNCTION AS TO DEFENDANT
PHILIP FLORA

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”) filed its
Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) in
this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC
Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent
injunctive relief, rescission or reformation of contracts, restitution, disgorgement of

1 ill-gotten gains, and other equitable relief for Defendant's acts or practices in
2 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 The Clerk, having found Defendant Phillip Flora in default, and the
4 Commission, having moved for entry of default judgment on all counts of the
5 Complaint against Defendant Flora, **IT IS THEREFORE ORDERED,**
6 **ADJUDGED, AND DECREED** as follows:

7 **FINDINGS**

8 1. This is an action by the Commission instituted under Sections 13(b) of
9 the FTC Act, 15 U.S.C. §§ 53(b). Pursuant to these Sections of the FTC Act, the
10 Commission has the authority to seek the relief contained herein.

11 2. The Complaint states a claim upon which relief may be granted under
12 Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

13 3. This Court has jurisdiction over the subject matter of this case and
14 personal jurisdiction over Defendant Flora.

15 4. Venue in the United States District Court for the Central District of
16 California is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).

17 5. The activities of Defendant Flora are “in or affecting commerce” as
18 “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

19 6. Defendant Flora was served with process in this matter. Defendant
20 Flora thereafter failed to file an answer to the Complaint within the time set forth
21 by Rule 12(a) of the Federal Rules of Civil Procedure, or to otherwise defend this
22 action. On June 19, 2013, the Clerk of Court entered an order of default as to
23 Defendant Flora. The Commission now is entitled to a default judgment, pursuant
24 to Rule 55(b) of the Federal Rules of Civil Procedure, as to Defendant Flora.

25 7. The factual allegations in the FTC’s Complaint are taken as true
26 against Flora. Based on these facts, the Court now finds that, in the course of
27 sending, or assisting others in sending, millions of Unauthorized or Unsolicited
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1 Commercial Electronic Text Messages to mobile telephones or other wireless
2 devices, Defendant Flora violated Section 5(a) of the FTC Act by falsely
3 representing, directly or indirectly, expressly or by implication, that consumers had
4 won a contest or been specially selected to receive a gift or prize that was without
5 cost or obligation.

6 8. The Court further finds that Defendant Flora violated Section 5 of the
7 FTC Act through his practice of initiating or procuring the transmission of
8 Unauthorized or Unsolicited Commercial Text Messages to the mobile telephone
9 phones and other wireless devices of consumers, which has caused or was likely to
10 cause substantial injury to consumers that consumers could not reasonably avoid
11 themselves and that was not outweighed by counterveiling benefits to consumers
12 or competition. 15 U.S.C. § 45(a) and 45(n).

13 9. Defendant Flora is likely to continue to engage in the acts and
14 practices alleged in the Complaint unless he is permanently enjoined from such
15 acts and practices.

16 10. Defendant Flora received \$148,309 in revenues from the conduct
17 alleged in the Complaint. The Commission is therefore entitled to equitable
18 monetary relief against Defendant Flora in the amount of \$148,309. *See FTC v.*
19 *Neovi, Inc.*, 604 F.3d 1150 (9th Cir. 2010) (“Disgorgement should include all gains
20 flowing from the illegal activities.”) (citation omitted).

21 11. This Order is in addition to, and not in lieu of, any other civil or
22 criminal remedies that may be provided by law.

23 12. Entry of this Order is in the public interest.

24 13. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of
25 this Order are binding upon Defendant Flora, his officers, agents, servants,
26 employees, and attorneys, and upon all other persons in active concert or
27 participation with any of them who receive actual notice of this Order by personal
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1 service or otherwise.

2 **DEFINITIONS**

3 For purposes of this Order, the following definitions shall apply:

4 1. **“Person”** means a natural person, an organization or other legal
5 entity, including a corporation, partnership, sole proprietorship, limited liability
6 company, association, cooperative, or any other group or combination acting as an
7 entity.

8 2. **“Plaintiff”** means the Federal Trade Commission (“Commission” or
9 “FTC”).

10 3. **“Defendant”** means Phillip Flora, also known as “Phil Anthony” and
11 “Anthony Flores,” and also doing business as Seaside Building Marketing, SB
12 Marketing, and US Data Source.

13 4. **“Unauthorized or Unsolicited Commercial Electronic Text**
14 **Message”** means an unauthorized or unsolicited text message the primary purpose
15 of which is a commercial advertisement or promotion of a commercial product or
16 service (including the content on an Internet website operated for commercial
17 purposes).

18
19 **I.**

20 **BAN ON UNAUTHORIZED OR**
21 **UNSOLICITED COMMERCIAL ELECTRONIC TEXT MESSAGES**

22 **IT IS ORDERED** that Defendant, whether acting directly or indirectly, is
23 permanently enjoined from making or initiating, or procuring the transmission of,
24 or assisting others in making or initiating, or procuring the transmission of,
25 unauthorized or unsolicited commercial electronic text messages to mobile
26 telephones or other wireless devices.

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1 **II.**

2 **PROHIBITED BUSINESS PRACTICES**

3 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,
4 servants, employees and attorneys, and all other persons. in active concert or
5 participation with any of them, who receive actual notice of this Order, whether
6 acting directly or indirectly, in connection with the advertising, marketing,
7 promotion, offering for sale, or sale of any good or service, are permanently
8 restrained and enjoined from:

9 A. Misrepresenting, or assisting others in misrepresenting, any material
10 fact, expressly or by implication, including, but not limited to:

- 11 1. that a good or service is "free;"
 - 12 2. that a good or service is without cost or obligation;
 - 13 3. that consumers have won a contest or have been selected to
14 receive a gift or prize;
 - 15 4. that consumers' personal information is being collected to send
16 consumers merchandise;
 - 17 5. the purpose for which consumers are providing personal
18 information;
 - 19 6. that personal information submitted by consumers will not be
20 sold or shared with third parties.
 - 21 7. the extent to which the privacy and confidentiality of
22 consumers' personal information is maintained and protected, including, but not
23 limited to:
 - 24 a. the purposes for which that information is collected and
25 disclosed; and
 - 26 b. the extent to which consumers' personal information is
27 made or has been made accessible to third parties.
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- 1 8. the total cost to purchase, receive, or use the good or service;
- 2 9. any material restrictions, limitations, or conditions to purchase,
- 3 receive, or use the good or service;
- 4 10. any material aspect of the performance, efficacy, nature, or
- 5 central characteristics of the good or service; and
- 6 11. any material aspect of the nature or terms of a refund,
- 7 cancellation, exchange, or repurchase policy for the good or service.

8 B. Failing to disclose, or assisting others in failing to disclose, clearly
9 and prominently, the material terms and conditions of any offer, including, but not
10 limited to:

11 1. in any text message, email, or online advertisement, and on any
12 landing page associated with such text message, email, or online advertisement,
13 that contains any direct or implied representation that a good or service is free or is
14 a gift or prize, failing to disclose, in the same color, font, and size, and within close
15 proximity to such representation, that a purchase is required, or that purchases are
16 required, to obtain such gift or prize, when such is the case; and

17 2. on any landing page associated with any direct or implied
18 representation that a good or service is free or is a gift or prize, failing to disclose,
19 in a clear and conspicuous manner:

- 20 a. a list of the monetary obligations a consumer is likely to
- 21 incur to obtain the advertised gift or prize; and
- 22 b. a list of any non-monetary obligations a consumer is
- 23 likely to incur to obtain the advertised gift or prize, such
- 24 as having to apply and qualify for credit cards or an
- 25 automobile loan.
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III.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of One Hundred Forty Eight Thousand, Three Hundred Ten Dollars (\$148,310) is entered in favor of the Commission against Defendant Phillip Flora as equitable monetary relief;

B. Upon entry of this Order, this monetary judgment shall become immediately due and payable by Defendant, and interest, computed pursuant to 28 U.S.C. § 1961(a), as amended, immediately shall begin to accrue upon the unpaid balance.

C. All payments under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by counsel for the Commission.

D. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited into the United States Treasury as disgorgement. Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Section.

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IV.

PROHIBITIONS REGARDING CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendant, Defendant’s officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

A. Disclosing, selling, renting, leasing, transferring, using, or benefitting from customer information, including the name, address, birth date, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the marketing or advertising of a good or service offering free gifts or prizes; and

B. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

V.

ORDER ACKNOWLEDGMENTS

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

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

B. For 5 years after entry of this Order, Defendant for any business that he is the majority owner or controls directly or indirectly, must deliver a copy of

1 this Order to: (1) all principals, officers, directors, and LLC managers and
2 members; (2) all employees, agents, and representatives who participate in conduct
3 related to the subject matter of this Order; and (3) any business entity resulting
4 from any change in structure as set forth in the Section titled Compliance
5 Reporting. Delivery must occur within 7 days of entry of this Order for current
6 personnel. For all others, delivery must occur before they assume their
7 responsibilities.

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

11 **VI.**

12 **COMPLIANCE REPORTING**

13 **IT IS FURTHER ORDERED** that Defendant make timely submissions to
14 the Commission:

15 A. 180 days after entry of this Order, and annually thereafter for ten (10)
16 years, Defendant must submit a compliance report, sworn under penalty of perjury.
17 Defendant must: (1) identify all telephone numbers and all email, Internet,
18 physical, and postal addresses, including all residences; (2) identify all business
19 activities, including any business for which Defendant performs services whether
20 as an employee or otherwise and any entity in which Defendant has any ownership
21 interest; (3) describe in detail Defendant's involvement in each such business,
22 including title, role, responsibilities, participation, authority, control, and any
23 ownership; (4) identify the primary physical, postal and email address and
24 telephone number, as designated points of contact, which representatives of the
25 Commission may use to communicate with Defendant; (5) identify all of
26 Defendant's businesses by all of their names, telephone numbers, and physical,
27 postal, email, and Internet addresses; (6) describe the activities of each business,
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1 including the goods and services offered, the means of advertising, marketing, and
2 sales, and the involvement of any other Defendant (which Defendant must describe
3 if he knows or should know due to his own involvement); (7) describe in detail
4 whether and how Defendant is in compliance with each Section of this Order; (8)
5 provide a copy of each Order Acknowledgment obtained pursuant to this Order,
6 unless previously submitted to the Commission; and (9) either certify that
7 Defendant has not engaged in any conduct banned by Section I of this Order, such
8 as through the execution and submission to the Commission of the Certification
9 attached to this Order, or provide a full written explanation of any banned conduct
10 engaged in by Defendant.

11 B. For twenty (20) years after entry of this Order, Defendant must submit
12 a compliance notice, sworn under penalty of perjury, within 14 days of any change
13 in the following: (1) name, including aliases or fictitious name, or residence
14 address; (2) title or role in any business activity, including any business for which
15 Defendant performs services whether as an employee or otherwise and any entity
16 in which Defendant has any ownership interest, and identify the name, physical
17 address, and Internet address of the business or entity; (3) any designated point of
18 contact; or (4) the structure of any entity that Defendant has any ownership interest
19 in or controls directly or indirectly that may affect compliance obligations arising
20 under this Order, including: creation, merger, sale, or dissolution of the entity or
21 any subsidiary, parent, or affiliate that engages in any acts or practices subject to
22 this Order.

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

26 D. Any submission to the Commission required by this Order to be
27 sworn under penalty of perjury must be true and accurate and comply with 28

1 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
2 the laws of the United States of America that the foregoing is true and correct.
3 Executed on: _____” and supplying the date, signatory's full name, title (if
4 applicable), and signature.

5 E. Unless otherwise directed by a Commission representative in writing,
6 all submissions to the Commission pursuant to this Order must be emailed to
7 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
8 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
9 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
10 subject line must begin: FTC v. Phillip Flora, FTC Matter No. X130039.

11 **VII.**

12 **RECORDKEEPING**

13 **IT IS FURTHER ORDERED** that Defendant must create certain records
14 for twenty (20) years after entry of the Order, and retain each such record for 5
15 years. Specifically, Defendant for any business in which he is a majority owner or
16 controls directly or indirectly, must create and retain the following records:

17 A. Accounting records showing the revenues from all goods or services
18 sold;

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

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

25 D. All records necessary to demonstrate full compliance with each
26 provision of this Order, including all submissions to the Commission; and
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1 E. For any goods or services that Defendant sells or assists others to sell,
2 a copy of each advertisement or other marketing material regarding such goods or
3 services.

4 **VIII.**

5 **COMPLIANCE MONITORING**

6 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
7 Defendant's compliance with this Order, including the financial representations
8 upon which part of the judgment was suspended and any failure to transfer any
9 assets as required by this Order:

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

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

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

RETENTION OF JURISDICTION

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

JUDGEMENT IS THEREFORE ENTERED in favor of the Plaintiff Federal Trade Commission and against Defendant Flora, pursuant to all the terms and conditions recited above.

IT IS SO ORDERED, this 47th day of P qxgo dgt, 2013.



Honorable Andrew Guilford
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

PHILIP FLORA,

Defendant.

Case No. SACV 13-00381 AG (JEMx)

ACKNOWLEDGEMENT BY
AFFIDAVIT OF COMPLIANCE

1. My name is Philip Flora. I am over the age of eighteen, and I have personal knowledge of the facts set forth in this Acknowledgment.

2. I was a Defendant and in the court case listed near the top of this page.

3. On _____, 201_, I received a copy of the Final Order for Permanent Injunction as to Philip Flora ("the Order"), which was signed by the Honorable Andrew Guilford and entered by the Court on _____, 201_.

4. Section I of the Order states as follows:

**I. BAN ON UNAUTHORIZED OR
UNSOLICITED COMMERCIAL ELECTRONIC TEXT MESSAGES**

IT IS ORDERED that Defendant, whether acting directly or indirectly, is permanently enjoined from making or initiating, or procuring the transmission of, or assisting others in making or initiating, or procuring the transmission of, unauthorized or unsolicited commercial electronic text messages to mobile telephones or other wireless devices.

Additionally, the Order defines "Unauthorized or Unsolicited Commercial

Electronic Text Message" as "an unauthorized or unsolicited text message the

primary purpose of which is a commercial advertisement or promotion of a

1 commercial product or service (including the content on an Internet website
2 operated for commercial purposes).”

3 4. I hereby certify that during the past year, I have not engaged in any
4
5 conduct banned by Section I of the Order.

6
7 I declare under penalty of perjury under the laws of the United States of America
8 that the foregoing is true and correct.

9
10 Executed on _____, 201__.

11 _____
12 Philip Flora

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15 State of _____, City of _____

16 Subscribed and sworn to before me
17 this _____ day of _____, 201__.

18 _____
19 Notary Public

20 My commission expires:
21 _____

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