

1 ye
 2 DAVID C. SHONKA
 Acting General Counsel
 3 FAYE CHEN BARNOUW, CA Bar No. 168631
 MARICELA SEGURA, CA Bar No. 225999
 4 BARBARA Y.K. CHUN, CA Bar No. 186907
 NICHOLAS M. MAY, DC Bar No. 979754
 fbarnouw@ftc.gov; msegura@ftc.gov
 5 bchun@ftc.gov; nmay@ftc.gov
 Federal Trade Commission
 6 10877 Wilshire Blvd., Ste. 700
 Los Angeles, CA 90024
 7 Tel: (310) 824-4343
 Fax: (310) 824-4380

8 Attorneys for the Plaintiff
 9 Federal Trade Commission

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 FEDERAL TRADE COMMISSION,

14 Plaintiff,

15 v.

16 MDK MEDIA INC., et al.,

17 Defendants.

Case No. 2:14-cv-05099-JFW
 (MRWx)

FINAL ORDER FOR
 PERMANENT INJUNCTION
 AND MONETARY JUDGMENT
 AGAINST DEFENDANTS
 WAYNE CALVIN BYRD II AND
 ANACAPA MEDIA LLC

18
 19
 20 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its
 21 First Amended Complaint for Permanent Injunction and Other Equitable Relief for
 22 a permanent injunction, and other equitable relief in this matter, pursuant to
 23 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C.
 24 § 53(b). In order to resolve all matters in dispute in this action between them, the
 25 Commission and Defendants Wayne Calvin Byrd II and Anacapa Media LLC have
 26 stipulated to resolve the pending litigation by entry of the attached Final Order for
 27 Permanent Injunction and Monetary Judgment Against Defendants Wayne Calvin
 28 Byrd II and Anacapa Media LLC (“Order”) with the terms set forth below.

FINDINGS

1
2 1. This Court has jurisdiction over the subject matter of this case and over all
3 parties hereto.

4 2. The First Amended Complaint charges that Defendants participated in
5 deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15
6 U.S.C. § 45, in a scheme to place unauthorized charges on consumers’ mobile
7 telephone bills, a practice known as “cramming.”

8 3. Settling Defendants Wayne Calvin Byrd II and Anacapa Media LLC neither
9 admit nor deny any of the allegations in the First Amended Complaint, except as
10 specifically stated in this Order. Only for purposes of this action, Settling
11 Defendants admit the facts necessary to establish jurisdiction.

12 4. Settling Defendants waive and release any claims that they may have against
13 Plaintiff, the Commission, the Receiver, and their agents that relate to this action.
14 Settling Defendants waive any claim that they may have under the Equal Access to
15 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
16 the date of this Order, and agree to bear their own costs and attorney fees.

17 5. Settling Defendants and the Commission waive all rights to appeal or
18 otherwise challenge or contest the validity of this Order.

DEFINITIONS

19
20 For the purpose of this Order, the following definitions apply:

21 A. **“Settling Defendants”** means the Individual Settling Defendant and the
22 Corporate Settling Defendant, individually, collectively, or in any combination.

23 B. **“Corporate Settling Defendant”** means Anacapa Media LLC and its dba’s,
24 successors, and assigns.

25 C. **“Individual Settling Defendant”** means Wayne Calvin Byrd II.

26 D. **“Person”** means any individual, group, unincorporated association, limited
27 general partnership, corporation, or other business entity.
28

1 **ORDER**

2 **I. BAN ON PLACING CHARGES ON TELEPHONE BILLS**

3 IT IS HEREBY ORDERED that Settling Defendants are permanently
4 restrained and enjoined from billing, submitting for billing, or assisting or
5 facilitating the billing or submitting for billing, charges to any telephone bill,
6 including but not limited to a bill for any voice, text, or data service.

7 **II. INJUNCTION AGAINST MISREPRESENTATIONS**

8 IT IS FURTHER ORDERED that, in connection with the advertising,
9 marketing, promotion, offering for sale, sale, or distribution of any product or
10 service, Settling Defendants, Settling Defendants’ officers, agents, employees, and
11 attorneys, and all other persons in active concert or participation with any of them,
12 who receive actual notice of this Order, whether acting directly or indirectly, are
13 permanently restrained and enjoined from making, or assisting others in making,
14 expressly or by implication, any false or misleading representation, including
15 representations concerning the cost, performance, efficacy, nature, characteristics,
16 benefits, or safety of any product or service, or concerning any consumer’s
17 obligation to pay for charges for any product or service.

18 **III. INJUNCTION AGAINST UNFAIR BILLING PRACTICES**

19 IT IS FURTHER ORDERED that, in connection with the advertising,
20 marketing, promotion, offering for sale, sale, or distribution of any product or
21 service, Settling Defendants, Settling Defendants’ officers, agents, employees, and
22 attorneys, and all other persons in active concert or participation with any of them,
23 who receive actual notice of this Order, whether acting directly or indirectly, are
24 permanently restrained and enjoined from causing any consumer to be billed for
25 any product or service without having previously obtained the consumer’s express
26 informed consent, and having created and maintained a record of such consent.
27
28

1 **IV. MONETARY JUDGMENT AND PARTIAL SUSPENSION**

2 IT IS FURTHER ORDERED that:

3 A. Judgment in the amount of Two Hundred Thousand Dollars (\$200,000) is
4 entered in favor of the Commission against Settling Defendants Wayne Calvin
5 Byrd II and Anacapa Media LLC, jointly and severally, as equitable monetary
6 relief.

7 B. Settling Defendants are ordered to pay to the Commission Sixty Thousand
8 Dollars (\$60,000), which, as Settling Defendants stipulate, their undersigned
9 counsel holds in escrow for no other purpose than payment to the Commission.
10 Such payment must be made within 7 days of entry of this Order by electronic fund
11 transfer in accordance with instructions previously provided by a representative of
12 the Commission. Upon such payment, the remainder of the judgment is
13 suspended, subject to the Subsections below.

14 C. The Commission's agreement to the suspension of part of the judgment is
15 expressly premised upon the truthfulness, accuracy, and completeness of Settling
16 Defendants' sworn financial statements and related documents (collectively,
17 "financial representations") submitted to the Commission, namely:

18 1. the Financial Statements of Individual Settling Defendant Wayne Calvin
19 Byrd II signed on July 11, 2014, July 16, 2014, and February 9, 2015, including the
20 attachments;

21 2. the Financial Statement of Corporate Settling Defendant Anacapa Media
22 LLC signed by Wayne Calvin Byrd II, CEO on July 14, 2014, including the
23 attachments;

24 3. the additional documentation submitted by Settling Defendants' counsel to
25 Commission counsel on July 12, 2014, February 6, 2015, and February 9, 2015,
26 including tax returns, invoices, bank statements, and other representations.

27 D. The suspension of the judgment will be lifted as to any Settling Defendant if,
28 upon motion by the Commission, the Court finds that Settling Defendant failed to

1 disclose any material asset, materially misstated the value of any asset, or made
2 any other material misstatement or omission in the financial representations
3 identified above.

4 E. If the suspension of the judgment is lifted, the judgment becomes
5 immediately due as to that Settling Defendant in the amount specified in
6 Subsection A above (which the parties stipulate only for purposes of this Section
7 represents the consumer injury alleged in the First Amended Complaint), less any
8 payment previously made pursuant to this Section and any other payment received
9 by the FTC relating to that Settling Defendant's practices alleged in the First
10 Amended Complaint, plus interest computed from the date of entry of this Order.

11 **V. ADDITIONAL MONETARY PROVISIONS**

12 IT IS FURTHER ORDERED that:

13 A. Settling Defendants relinquish dominion and all legal and equitable right,
14 title, and interest in all assets transferred pursuant to this Order and may not seek
15 the return of any assets.

16 B. The facts alleged in the First Amended Complaint will be taken as true,
17 without further proof, in any subsequent civil litigation by or on behalf of the
18 Commission in a proceeding to enforce its rights to any payment or monetary
19 judgment pursuant to this Order, such as a nondischargeability complaint in any
20 bankruptcy case.

21 C. The facts alleged in the First Amended Complaint establish all elements
22 necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A)
23 of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have
24 collateral estoppel effect for such purposes.

25 D. Settling Defendants acknowledge that their Taxpayer Identification Numbers
26 (Social Security Numbers or Employer Identification Numbers), which Settling
27 Defendants previously submitted to the Commission, may be used for collecting
28

1 and reporting on any delinquent amount arising out of this Order, in accordance
2 with 31 U.S.C. §7701.

3 E. All money paid to the Commission pursuant to this Order may be deposited
4 into a fund administered by the Commission or its designee to be used for
5 equitable relief, including consumer redress and any attendant expenses for the
6 administration of any redress fund. If a representative of the Commission decides
7 that direct redress to consumers is wholly or partially impracticable or money
8 remains after redress is completed, the Commission may apply any remaining
9 money for such other equitable relief (including consumer information remedies)
10 as it determines to be reasonably related to Settling Defendants' practices alleged
11 in the First Amended Complaint. In addition, all money paid to the Commission
12 pursuant to this Order may be used to pay the fees associated with the receivership
13 in this matter, as approved in the Court's September 11, 2014 order. Any money
14 not used for such equitable relief or receivership fees is to be deposited to the U.S.
15 Treasury as disgorgement. Settling Defendants have no right to challenge any
16 actions the Commission or its representatives may take pursuant to this Subsection.

17 F. If a Settling Defendant is in default on any obligations under this Section,
18 then the judgment amount, minus any payments previously made pursuant to this
19 Section and any other payments received by the FTC relating to Settling
20 Defendants' conduct, becomes immediately due.

21 G. If any Settling Defendant fails to pay fully the amount due at the time
22 specified, Settling Defendants must cooperate fully with the Commission and their
23 representatives in all attempts to collect the judgment. In such an event, Settling
24 Defendants agree to provide federal and state tax returns for the preceding 2 years,
25 and to complete new financial disclosure forms fully and accurately within 10
26 business days of receiving a request from the Commission. Settling Defendants
27 further authorize the Commission to verify all information provided on their
28

1 financial disclosure forms with all appropriate third parties, including financial
2 institutions.

3 **VI. CUSTOMER INFORMATION**

4 IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants'
5 officers, agents, employees, and attorneys, and all other persons in active concert
6 or participation with any of them, who receive actual notice of this Order, whether
7 acting directly or indirectly, are permanently restrained and enjoined from directly
8 or indirectly:

9 A. failing to provide sufficient customer information in the Settling Defendants'
10 possession or control to enable the Commission to efficiently administer consumer
11 redress. If a representative of the Commission requests in writing any information
12 related to redress, Settling Defendants must provide it, in the form prescribed by
13 the Commission, within 14 days.

14 B. disclosing, using, or benefitting from customer information, including the
15 name, address, telephone number, email address, social security number, other
16 identifying information, or any data that enables access to a customer's account
17 (including a credit card, bank account, telephone billing account, or other financial
18 account), that any Settling Defendant obtained prior to entry of this Order in
19 connection with the placement of charges on consumers' mobile telephone bills;
20 and

21 C. failing to destroy such customer information in all forms in their possession,
22 custody, or control within 30 days after receipt of written direction to do so from a
23 representative of the Commission.

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

1 **VII. COOPERATION**

2 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate
3 with representatives of the Commission in this case and in any investigation or
4 litigation related to or associated with the transactions or the occurrences that are
5 the subject of the First Amended Complaint. Such Settling Defendants must
6 provide truthful and complete information, evidence, and testimony. Such
7 Individual Settling Defendant must appear and such Corporate Settling Defendant
8 must cause Corporate Settling Defendant's officers, employees, representatives, or
9 agents to appear for (1) interviews and/or discovery at a location within that
10 Settling Defendants' county of residence, or at (2) hearings, trials, and any other
11 proceedings that a Commission representative may reasonably request upon 10
12 days written notice, or other reasonable notice, at such places and times as a
13 Commission representative may designate, without the service of a subpoena.

14 **VIII. ORDER ACKNOWLEDGMENTS**

15 IT IS FURTHER ORDERED that Settling Defendants obtain
16 acknowledgments of receipt of this Order:

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

20 B. For 3 years after entry of this Order, each Individual Settling Defendant for
21 any business involved with placing charges on phone bills that such Defendant,
22 individually or collectively with any other Defendants, is the majority owner or
23 controls directly or indirectly, and each Corporate Settling Defendant, must deliver
24 a copy of this Order to: (1) all principals, officers, directors, and LLC managers
25 and members; (2) all employees, agents, and representatives who participate in the
26 placement of charges on phone bills; and (3) any business entity resulting from any
27 change in structure as set forth in the Section titled Compliance Reporting.
28

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

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

6 **IX. COMPLIANCE REPORTING**

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

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

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

23 2. Additionally, Individual Settling Defendant must: (a) identify all telephone
24 numbers and all physical, postal, email and Internet addresses, including all
25 residences; (b) identify all business activities, including any business for which
26 such Defendant performs services whether as an employee or otherwise and any
27 entity in which such Defendant has any ownership interest; and (c) describe in
28

1 detail such Defendant's involvement in each such business, including title, role,
2 responsibilities, participation, authority, control, and any ownership.

3 B. For 3 years after entry of this Order, each Settling Defendant must submit a
4 compliance notice, sworn under penalty of perjury, within 14 days of any change
5 in the following:

6 1. Each Settling Defendant must report any change in: (a) any designated point
7 of contact; or (b) the structure of any Corporate Settling Defendant or any entity
8 that any Settling Defendant has any ownership interest in or controls directly or
9 indirectly that may affect compliance obligations arising under this Order,
10 including: creation, merger, sale, or dissolution of the entity or any subsidiary,
11 parent, or affiliate that engages in any acts or practices subject to this Order.

12 2. Additionally, Individual Settling Defendant must report any change in: (a)
13 name, including aliases or fictitious name, or residence address; or (b) title or role
14 in any business activity, including any business for which such Defendant
15 performs services whether as an employee or otherwise and any entity in which
16 such Defendant has any ownership interest, and identify the name, physical
17 address, and any Internet address of the business or entity.

18 C. For 3 years after entry of this Order, each Settling Defendant must submit to
19 the Commission notice of the filing of any bankruptcy petition, insolvency
20 proceeding, or similar proceeding by or against such Defendant within 14 days of
21 its filing.

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

1 E. Unless otherwise directed by a Commission representative in writing, all
2 submissions to the Commission pursuant to this Order must be emailed to
3 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
4 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
5 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
6 subject line must begin: FTC v. Wayne Calvin Byrd II and Anacapa Media LLC,
7 X140034.

8 **X. RECORDKEEPING**

9 IT IS FURTHER ORDERED that Settling Defendants must create certain
10 records for 3 years after entry of the Order, and retain each such record for 2 years.
11 Specifically, Settling Corporate Defendant and Individual Settling Defendant for
12 any business that such Defendant, individually or collectively with any other
13 Defendants, is a majority owner or controls directly or indirectly, must create and
14 retain the following records:

- 15 A. accounting records showing the revenues from all goods or services sold;
16 B. personnel records showing, for each person providing services, whether as
17 an employee or otherwise, that person's: name; addresses; telephone numbers; job
18 title or position; dates of service; and (if applicable) the reason for termination;
19 C. records of all consumer complaints and refund requests, whether received
20 directly or indirectly, such as through a third party, and any response;
21 D. all records necessary to demonstrate full compliance with each provision of
22 this Order, including all submissions to the Commission; and
23 E. a copy of each unique advertisement or other marketing material.

24 **XI. COMPLIANCE MONITORING**

25 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling
26 Defendants' compliance with this Order, including the financial representations
27
28

1 upon which part of the judgment was suspended and any failure to transfer any
2 assets as required by this Order:

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

10 B. For matters concerning this Order, the Commission is authorized to
11 communicate directly with each Settling Defendant. Settling Defendant must
12 permit representatives of the Commission to interview any employee or other
13 person affiliated with any Settling Defendant who has agreed to such an interview.
14 The person interviewed may have counsel present.

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

21 D. Upon written request from a representative of the Commission, any
22 consumer reporting agency must furnish consumer reports concerning Individual
23 Settling Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15
24 U.S.C. §1681b(a)(1).

25 ///

26 ///

27 ///

28 ///

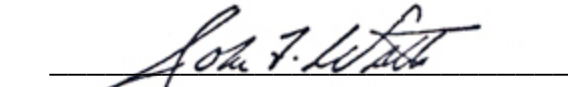
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XII. 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.

IT IS SO ORDERED.

Dated: May 6, 2015



Hon. John F. Walter
UNITED STATES DISTRICT JUDGE