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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NUTRACLICK, LLC,

Defendants.

Case No.: CV 16-6819-DMG (JPRx)

**STIPULATED ORDER FOR
COMPENSATORY CONTEMPT
SANCTIONS [9]**

On September 20, 2016, the Court entered the Order for Permanent Injunction and Monetary Judgment [Doc. # 7] (the “Stipulated Order”), resolving the Federal Trade Commission’s (“Commission” or “FTC”) allegations that NutraClick, LLC (“NutraClick”) violated Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, and Section 4 of the Restore Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403. The Commission and Contempt Defendants NutraClick, LLC, Daniel Wallace, and Patrick Carroll now stipulate and agree to entry of this Stipulated Order for Compensatory Contempt Sanctions (the “Contempt Order”) to settle and resolve all matters in dispute between the Commission and Contempt Defendants arising out of the Commission’s allegations that Contempt Defendants violated Sections

1 I, II.A, II.B, and V of the Stipulated Order prior to the date of entry of this
2 Contempt Order.

3 THEREFORE, IT IS ORDERED as follows:

4 **FINDINGS**

- 5 1. This Court has jurisdiction over this matter.
- 6 2. The Stipulated Order entered by this Court on September 20, 2016, is valid
7 and unambiguous. The Court entered the Stipulated Order enjoining NutraClick
8 and its officers from, *inter alia*, (1) misrepresenting the length of consumers' trial
9 periods before consumers are charged or billed and the timing of any charge or
10 bill (Sections I.G, I.F); (2) failing to disclose clearly and conspicuously and in
11 close proximity to consumers' provision of billing information the deadline by
12 which consumers must act in order to stop all recurring charges (Section II.A.3);
13 (3) failing to send consumers who purchased goods or services through a
14 Negative Option Feature written confirmation including clear and conspicuous
15 disclosures of the terms of the Negative Option Feature specifically including the
16 deadline by which consumers must act to stop a recurring charge (Section II.B);
17 and (4) violating ROSCA by failing to clearly and conspicuously disclose the
18 deadline by which consumers must act to avoid a recurring charge, before
19 obtaining consumers' billing information (Section V).
- 20 3. Contempt Defendants had notice of the Stipulated Order.
- 21 4. On September 21, 2020, the Commission filed with this Court a Complaint
22 for Permanent Injunction and Other Equitable Relief in *FTC v. NutraClick, LLC,*
23 *et al.* ("Complaint"), Case No. CV 20-08612 (C.D. Cal.), alleging that NutraClick
24 and its officers in connection with charging or attempting to charge consumers for
25 products sold through a negative option feature, did not clearly and conspicuously
26 disclose all material terms of the transaction, such as the billing date that
27 consumers would be charged, before obtaining consumers' billing information or
28 consent to pay, in violation of ROSCA and the TSR.

1 5. The Commission alleges the conduct described in the Complaint violates
2 the Stipulated Order.

3 6. Contempt Defendants neither admit nor deny the allegations identified in
4 Paragraphs 2 through 5, above, or as otherwise stated in the Complaint, except as
5 specifically stated in this Order and any Order of the Court resolving the
6 allegations of the Complaint. Defendants admit the facts necessary to establish
7 jurisdiction.

8 7. The parties have agreed to settle the Commission's contempt allegations
9 with entry of this Order.

10 8. Contempt Defendants waive any claim that they may have under the Equal
11 Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action
12 through the date of this Order, and agree to bear their own costs and attorney fees.

13 9. Contempt Defendants waive all rights to appeal or otherwise challenge or
14 contest the validity of this Order.

15 **DEFINITIONS**

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

17 A. **“Corporate Defendant”** means NutraClick, LLC and its successors and
18 assigns.

19 B. **“Contempt Defendants”** means Corporate Defendant and both Individual
20 Defendants, individually, collectively, or in any combination.

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

22 **ORDER**

23 **I. MONETARY JUDGMENT**

24 IT IS ORDERED that:

25 A. Judgment in the amount of one million thirty-nine thousand eight hundred
26 twenty-four dollars and twenty-four cents (\$1,039,824.24) is entered in favor of
27 the Commission against Contempt Defendants, jointly and severally, as
28 compensatory contempt relief.

1 B. Contempt Defendants are ordered to pay to the Commission one million
2 thirty-nine thousand eight hundred twenty-four dollars and twenty-four cents
3 (\$1,039,824.24), which, as Contempt Defendants stipulate, their undersigned
4 counsel holds in escrow for no purpose other than payment to the Commission.
5 Such payment must be made within seven (7) days of entry of this Contempt
6 Order by electronic fund transfer in accordance with instructions provided by a
7 representative of the Commission.

8 **II. ADDITIONAL MONETARY PROVISIONS**

9 IT IS FURTHER ORDERED that:

10 A. Contempt Defendants relinquish dominion and all legal and equitable right,
11 title, and interest in all assets transferred pursuant to this Contempt Order and
12 may not seek the return of any assets.

13 B. The factual findings above will be taken as true, without further proof, in
14 any subsequent civil litigation by or on behalf of the Commission, including in a
15 proceeding to enforce its rights to any payment or monetary judgment pursuant to
16 this Contempt Order, such as a nondischargeability complaint in any bankruptcy
17 case.

18 C. The factual findings above and the facts alleged in the FTC's Complaint
19 establish all elements necessary to sustain an action by the Commission pursuant
20 to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and
21 this Order will have collateral estoppel effect for such purposes.

22 D. Contempt Defendants acknowledge that their Taxpayer Identification
23 Numbers (Social Security Numbers or Employer Identification Numbers) may be
24 used for collecting and reporting on any delinquent amount arising out of this
25 Order, in accordance with 31 U.S.C. § 7701.

26 E. All money paid to the Commission pursuant to this Order may be deposited
27 into a fund administered by the Commission or its designee to be used for
28 equitable relief, including consumer redress and any attendant expenses for the

1 administration of any redress fund. If a representative of the Commission decides
2 that direct redress to consumers is wholly or partially impracticable or money
3 remains after redress is completed, the Commission may apply any remaining
4 money for such other equitable relief (including consumer information remedies)
5 as it determines to be reasonably related to Contempt Defendants' practices
6 described in the Findings section above. Any money not used for such equitable
7 relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have
8 no right to challenge any actions the Commission or its representatives may take
9 pursuant to this Subsection.

10 **III. CUSTOMER INFORMATION**

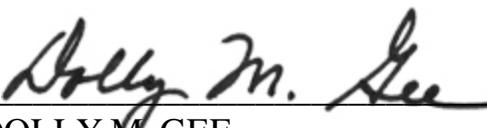
11 IT IS FURTHER ORDERED that Contempt Defendants, Contempt
12 Defendants' officers, agents, and employees, and all other persons in active
13 concert or participation with any of them, who receive actual notice of this Order,
14 whether acting directly or indirectly, in connection with advertising, marketing,
15 promotion, offering for sale, or sale of any good or service with a negative option
16 feature must provide sufficient customer information to enable the Commission to
17 efficiently administer consumer redress. If a representative of the Commission
18 requests in writing any information related to redress, Contempt Defendants must
19 provide it, in the form prescribed by the Commission, within 14 days.

20 **IV. RETENTION OF JURISDICTION**

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

23 **IT IS SO ORDERED.**

24
25
26 DATED: September 25, 2020

27 
28 DOLLY M. GEE
UNITED STATES DISTRICT JUDGE