

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**

NOV 25 2014

Clerk, U.S. District Court  
District Of Montana  
Missoula

CV 13-3-M-DLC

FEDERAL TRADE COMMISSION,

Plaintiff,

-vs-

AMERICAN EVOICE, LTD., EMERICA  
MEDIA CORPORATION, FONERIGHT,  
INC., GLOBAL VOICE MAIL, LTD.,  
HEARYOU2, INC., NETWORK  
ASSURANCE, INC., SECURATDAT,  
INC., TECHMAX SOLUTIONS, INC.,  
VOICE MAIL PROFESSIONALS, INC.,  
STEVE V. SANN, TERRY D. LANE,  
a/k/a TERRY D. SANN, NATHAN M.  
SANN, ROBERT M. BRAACH,

Defendants,

*and*

BIBLIOLOGIC, LTD.,

Relief Defendant.

STIPULATED PERMANENT  
INJUNCTION ORDER AND  
MONETARY JUDGMENT

On January 8, 2013, Plaintiff Federal Trade Commission (“FTC” or “Commission”) filed its Complaint (DE 1) for a permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), against Defendants American eVoice, Ltd.; Emerica Media Corp.; FoneRight, Inc.; Global Voice Mail, Ltd.;

HearYou2, Inc.; Network Assurance, Inc.; SecurDat, Inc.; Techmax Solutions, Inc.; Voice Mail Professionals, Inc.; Steven V. Sann; Terry D. Lane (a/k/a Terry D. Sann); Nathan M. Sann; and Robert M. Braach (“Defendants”); and Relief Defendant Bibliologic, Ltd. On March 1, 2013, Defendant Nathan M. Sann filed an Answer (D.E. 39) denying the FTC’s allegations and setting forth various affirmative defenses.

Plaintiff FTC and Defendant Nathan M. Sann have now stipulated to the entry of this Stipulated Permanent Injunction (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

### **FINDINGS**

1. This Court has jurisdiction over this matter.
2. The FTC’s Complaint charges that Defendants engaged in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by placing unauthorized charges on consumers’ telephone bills (“cramming”).
3. Defendant Nathan M. Sann neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Nathan M. Sann admits the facts necessary to establish jurisdiction.

4. Defendant Nathan M. Sann waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney fees.
5. Defendant Nathan M. Sann waives all rights to appeal or otherwise challenge or contest the validity of this Order.

### **DEFINITIONS**

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

1. **“Clearly and Conspicuously”** means:
  - a. In print communications, the message shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent because of its type size, contrast to the background against which it appears, location, or other characteristics, for an ordinary consumer to notice, read, and comprehend it in relation to any claim it may be modifying;
  - b. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, mobile services and software), the message shall be presented in close proximity to the triggering claim without the use of pop-up windows or hyperlinks to other electronic pages. In

any communication presented solely through visual or audio means, the message shall be made through the same means in which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, online services, or mobile services, a disclosure must be unavoidable and presented prior to the consumer incurring any financial obligation. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it in relation to any claim it may be modifying. Any visual message shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, because of its size and shade, contrast to the background against which it appears, length of time it appears on the screen, and its location, for an ordinary consumer to notice, read, and comprehend it in relation to any claim it may be modifying; and

- c. Regardless of the medium used to disseminate it, the message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

2. **“Corporate Defendants”** means American eVoice, Ltd.; Emerica Media Corp.; FoneRight, Inc.; Global Voice Mail, Ltd.; HearYou2, Inc.; Network Assurance, Inc.; SecurDat, Inc.; Techmax Solutions, Inc.; Voice Mail Professionals, Inc., as well as any affiliates, subsidiaries, successors, or assigns, and any fictitious business entities or business names created or used by these entities, or any of them.
3. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination
4. **“In Close Proximity”** shall mean for any communication presented solely through visual means: on the same webpage, online service page, mobile device screen, or other electronic page, and immediately adjacent to any: (1) cost-related claim; or (2) request that consumers provide their name, address, telephone number, email address, or any payment information, and viewable in conjunction with the claim or request in such a manner that the communication is viewable without requiring the consumer to scroll up, down, or sideways, or otherwise adjust their browser window or mobile device window in any way. Representations or disclosures in response to any: (1) cost-related claim; or (2) request that consumers provide their name, address, telephone number, email address, or any other payment information

that are accessed or displayed through hyperlinks, pop-ups, interstitials, or other means are NOT “In Close Proximity.”

5. **“Individual Defendants”** means Steven V. Sann; Terry D. Lane (a/k/a Terry D. Sann); Nathan M. Sann; and Robert M. Braach.
6. **“Person”** means a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

## **ORDER**

### **I. PROHIBITION AGAINST TELEPHONE BILLING**

**IT IS THEREFORE ORDERED** that Defendant Nathan M. Sann is permanently restrained and enjoined from placing charges on any person’s telephone bill, whether directly or through an intermediary, including by providing any advertising, marketing, financial, or technical assistance to other persons to place charges on any person’s telephone bill.

### **II. PROHIBITION AGAINST BILLING WITHOUT AUTHORIZATION**

**IT IS FURTHER ORDERED** that Defendant Nathan M. Sann and his officers, agents, servants, and employees, 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, are permanently restrained and enjoined from (a)

representing or assisting others in representing, expressly or by implication, that a consumer is obligated to pay any charge for goods or services, or (b) causing or assisting others in causing any charge to be billed to a consumer's account, unless:

1. the consumer provides express verifiable authorization to be charged; and
2. all material terms of the offer for which the consumer is billed, including the number and amount of each charge and the account to which each charge will be billed, have been clearly and conspicuously disclosed prior to the authorization of the charge and in close proximity to any request that the consumer provide his or her name, address, telephone number, email address, account number or any other payment information.

### **III. PROHIBITION AGAINST USE OF CONSUMER INFORMATION**

**IT IS FURTHER ORDERED** that Defendant Nathan M. Sann and his officers, agents, servants, and employees, 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, are hereby restrained and enjoined from:

1. disclosing, using, or benefitting from customer information, including the name, address, 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 placement of charges on consumers' telephone bills; and

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

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 law, regulation, or court order.

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

**IT IS FURTHER ORDERED** that:

1. Judgment in the amount of twenty-one million, two hundred three thousand, four hundred and ninety-six dollars and seventy-three cents (\$21,203,496.73) is hereby entered in favor of the Commission against Defendant Nathan M. Sann as equitable monetary relief. Plaintiff FTC and Defendant Nathan M. Sann stipulate, only for purposes of this Section IV, that this sum represents the amount of consumer injury arising from the acts and practices alleged in the Complaint during the time in which Defendant Nathan M. Sann participated in those acts and practices.



2. Within five (5) days of the entry of this Order, Defendant Nathan M. Sann shall surrender and deliver to the Commission or its designated representative all right, title and interest to, and possession of the precious metal coins identified in Item 17 of Defendant Nathan M. Sann's Financial Statement dated February 6, 2013, and further described in supplemental financial information provided to the FTC in an email dated July 23, 2014, from Nathan M. Sann's counsel. The Commission or its designated representative shall then liquidate the coins, and the net proceeds of the sale shall be paid to the Commission in partial satisfaction of the monetary judgment.
3. Upon the payment required by Section IV.B, the remainder of the monetary judgment is suspended, subject to Sections IV.D through IV.G below.
4. The Commission's agreement to the suspension of part of the monetary judgment is expressly premised upon the truthfulness, accuracy, and completeness of the Defendant Nathan M. Sann's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:
  - a. Financial Statement of Defendant Nathan M. Sann signed on February 6, 2013, including attachments; and

- b. Supplementary financial information of Nathan M. Sann provided to the FTC in an email dated July 23, 2014, from Nathan M. Sann's counsel.
5. The suspension of the judgment will be lifted as to Defendant Nathan M. Sann if, upon motion by the Commission, the Court finds that Defendant Nathan M. Sann failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
6. The suspension of the judgment will be lifted as to Defendant Nathan M. Sann if he defaults on any of his obligations under this Section IV.
7. If the suspension of the judgment is lifted as to Defendant Nathan M. Sann, the judgment becomes immediately due as to him in the amount specified in Section IV.A above, less any payments previously made pursuant to this Section IV, plus interest computed from the date of entry of this Order.

#### **V. ADDITIONAL MONETARY PROVISIONS**

**IT IS FURTHER ORDERED** that:

1. Defendant Nathan M. Sann relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

2. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.
3. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.
4. Defendant Nathan M. Sann acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which he previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.
5. 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 if 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 Defendants' practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited into the U.S. Treasury as disgorgement. Defendant Nathan M. Sann has no right to challenge any actions the Commission or its representatives may take pursuant to this Section V.E.

#### **VI. MODIFICATION OF ASSET FREEZE**

**IT IS FURTHER ORDERED** that the freeze imposed on Defendant Nathan M. Sann's assets pursuant to the Stipulated Preliminary Injunction entered on May 8, 2013 (DE 55) is modified to permit the payment and transfer of property required by Section IV of this Order. Upon completion of the payment and transfer of property required by Section IV, the freeze imposed on Defendant Nathan M. Sann's assets shall be dissolved.

#### **VII. ORDER ACKNOWLEDGMENTS**

**IT IS FURTHER ORDERED** that Defendant Nathan M. Sann obtains acknowledgments of receipt of this Order.

1. Defendant Nathan M. Sann, 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.

2. For 5 years after entry of this Order, Defendant Nathan M. Sann, for any business that he, individually or collectively with any other Defendants, is the majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in activity relating to the placement of charges on consumers' bills; and (3) any business entity resulting from any change in structure as set forth in the Section VIII below. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

### **VIII. COMPLIANCE REPORTING**

**IT IS FURTHER ORDERED** that Defendant Nathan M. Sann makes timely submissions to the Commission.

1. One year after entry of this Order, Defendant Nathan M. Sann must submit a compliance report, sworn under penalty of perjury.
  - a. Defendant Nathan M. Sann 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 him; (b) identify all of his 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, sales, methods of payment, and the involvement of any other Defendant (which Defendant Nathan M. Sann must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how he is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

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

2. For 10 years after entry of this Order, Defendant Nathan M. Sann must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
  - a. Defendant Nathan M. Sann must report any change in: (a) any designated point of contact; or (b) the structure of any entity that he 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.
  - b. Defendant Nathan M. Sann must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.
3. Defendant Nathan M. Sann must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

4. 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 [date] at [location].” and supplying the date, location, signatory’s full name, title (if applicable), and signature.
5. 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 (with “FTC v. American eVoice, X130020” in the subject line) 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

RE: FTC v. American eVoice, X130020

#### **IX. RECORDKEEPING**

**IT IS FURTHER ORDERED** that Defendant Nathan M. Sann must create certain records for 10 years after entry of this Order, and retain each such record for 5 years. Specifically, Defendant Nathan M. Sann, for any business that he, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:



1. accounting records showing the revenues from all goods or services sold or billed;
2. personnel records showing, for each person providing services, 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;
3. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
4. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
5. a copy of each unique advertisement or other marketing material.

#### **X. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for purposes of monitoring Defendant Nathan M. Sann's compliance with this Order, including the financial representations identified in Section IV.E and the payment of funds and transfer of property required by Section IV.B and IV.C of this Order:

1. Within 21 days of receipt of a written request from a representative of the Commission, Defendant Nathan M. Sann must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents

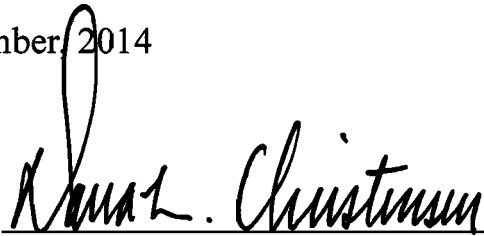
for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

2. For matters concerning this Order, the Commission is authorized to communicate directly with Defendant Nathan M. Sann. Defendant Nathan M. Sann must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.
3. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant Nathan M. Sann or any individual or entity affiliated with him, 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.

**RETENTION OF JURISDICTION**

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

Dated this 25<sup>th</sup> day of November, 2014

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

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Dana L. Christensen, Chief Judge  
United States District Court