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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
AGAINST DEFENDANTS
SARAH ANN BREKKE AND
TENDENCI MEDIA LLC

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

1 **FINDINGS**

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 Sarah Ann Brekke and Tendenci 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.

19 **DEFINITIONS**

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 Tendenci Media LLC and its dba’s,
24 successors, and assigns.

25 C. **“Individual Settling Defendant”** means Sarah Ann Brekke.

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

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

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

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

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

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

25 **V. COOPERATION**

26 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate
27 with representatives of the Commission in this case and in any investigation or
28 litigation related to or associated with the transactions or the occurrences that are

1 the subject of the First Amended Complaint. Such Settling Defendants must
2 provide truthful and complete information, evidence, and testimony. Such
3 Individual Settling Defendant must appear and such Corporate Settling Defendant
4 must cause Corporate Settling Defendant's officers, employees, representatives, or
5 agents to appear for (1) interviews and/or discovery at a location within that
6 Settling Defendants' county of residence, or at (2) hearings, trials, and any other
7 proceedings that a Commission representative may reasonably request upon 10
8 days written notice, or other reasonable notice, at such places and times as a
9 Commission representative may designate, without the service of a subpoena.

10 **VI. ORDER ACKNOWLEDGMENTS**

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

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

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

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

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

1 **VII. COMPLIANCE REPORTING**

2 IT IS FURTHER ORDERED that Settling Defendants make timely
3 submissions to the Commission:

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

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

18 2. Additionally, Individual Settling Defendant must: (a) identify all telephone
19 numbers and all physical, postal, email and Internet addresses, including all
20 residences; (b) identify all business activities, including any business for which
21 such Defendant performs services whether as an employee or otherwise and any
22 entity in which such Defendant has any ownership interest; and (c) describe in
23 detail such Defendant's involvement in each such business, including title, role,
24 responsibilities, participation, authority, control, and any ownership.

25 B. For 3 years after entry of this Order, each Settling Defendant must submit a
26 compliance notice, sworn under penalty of perjury, within 14 days of any change
27 in the following:
28

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

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

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

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

23
24 E. Unless otherwise directed by a Commission representative in writing, all
25 submissions to the Commission pursuant to this Order must be emailed to
26 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
27 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
28 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The

1 subject line must begin: FTC v. Sarah Ann Brekke and Tendenci Media LLC,
2 X140034.

3 **VIII. RECORDKEEPING**

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

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

19 **IX. COMPLIANCE MONITORING**

20 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling
21 Defendants' compliance with this Order, including the financial representations
22 upon which part of the judgment was suspended and any failure to transfer any
23 assets as required by this Order:

- 24 A. Within 14 days of receipt of a written request from a representative of the
25 Commission, each Settling Defendant must: submit additional compliance reports
26 or other requested information, which must be sworn under penalty of perjury;
27 appear for depositions; and produce documents for inspection and copying. The
28

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

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

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

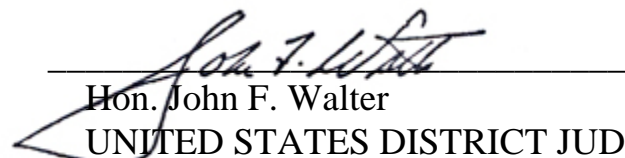
15 D. Upon written request from a representative of the Commission, any
16 consumer reporting agency must furnish consumer reports concerning Individual
17 Settling Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15
18 U.S.C. §1681b(a)(1).

19 **X. RETENTION OF JURISDICTION**

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

22
23 IT IS SO ORDERED.

24 Dated: May 6, 2015

25 
26 Hon. John F. Walter
27 UNITED STATES DISTRICT JUDGE
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