

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Federal Trade Commission,

10 Plaintiff,

11 v.

12 LifeLock Incorporated, *et al.*,

13 Defendants.

No. CV-10-00530-PHX-JJT

**AMENDED ORDER**

14 This Amended Order supersedes the Court’s December 22, 2015 Order (Doc. 65).  
15 Plaintiff Federal Trade Commission (“FTC” or “Commission”) and Defendant LifeLock,  
16 Inc. (“LifeLock”) have settled and resolved all matters in dispute arising from the FTC’s  
17 Contempt action initiated against LifeLock on July 21, 2015 (Doc. 20), and pursuant to  
18 Federal Rule of Civil Procedure 60(b), seek to modify this Court’s March 15, 2010  
19 Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable  
20 Relief (Doc. 9) (“Permanent Injunction”). Based on the Findings set forth below, upon  
21 review of the parties’ submissions, and good cause appearing, the Court will grant the  
22 Consent Motion for Entry of Order (Doc. 64) and enter such Order on the terms that  
23 follow:

24 **FINDINGS**

25 1. This Court entered the Permanent Injunction enjoining LifeLock from, *inter*  
26 *alia*, “misrepresenting in any manner, expressly or by implication, the means, methods,  
27 procedures, effects, effectiveness, coverage, or scope” of its identity theft protection  
28 service (Section I.A.5);

1           2.     The Permanent Injunction enjoins LifeLock from “misrepresenting in any  
2 manner, expressly or by implication, the manner or extent to which they maintain and  
3 protect the privacy, confidentiality, or security of any personal information collected  
4 from or about consumers” (Section I.B.);

5           3.     The Permanent Injunction requires LifeLock to “establish and implement,  
6 and thereafter maintain, a comprehensive information security program” (Section II);

7           4.     The Permanent Injunction further requires LifeLock to create and retain  
8 “[a]ll records and documents necessary to determine full compliance with each  
9 provision” of the Permanent Injunction (Section VIII.A.7);

10          5.     On July 21, 2015, the Commission alleged that LifeLock violated the  
11 Permanent Injunction by: (a) failing to establish and maintain a comprehensive  
12 information security program to protect its users’ sensitive personal data, including credit  
13 card, social security, and bank account numbers; (b) falsely advertising that it protected  
14 consumers’ sensitive data with the same high-level safeguards as financial institutions;  
15 (c) failing to meet the Permanent Injunction’s recordkeeping requirements; and (d)  
16 falsely claiming it protected consumers’ identity 24/7/365 by providing alerts “as soon  
17 as” it received any indication there was a problem;

18          6.     LifeLock neither admits nor denies the allegations identified in Paragraph 5  
19 above;

20          7.     These findings constitute an appropriate change in circumstances to warrant  
21 modifying Sections VI through IX of the Permanent Injunction pursuant to Rule 60(b) of  
22 the Federal Rules of Civil Procedure; and

23          8.     The parties have agreed to settle the Commission’s allegations with the  
24 entry of this Order.

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**DEFINITIONS**

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2 1. “Affected Consumer(s)” means any person(s) who has subscribed to any  
3 LifeLock fee-based identity theft protection service, and could assert a claim arising from  
4 the types of violations alleged in Paragraph 5 of the Findings, excluding: LifeLock; any  
5 parent, subsidiary, affiliate, or controlled person of LifeLock; the officers, directors,  
6 agents, employees of LifeLock; any counsel in the Covered Class Action; and any judge  
7 or court staff presiding over the Covered Class Action or this action.

8 2. “Covered Class Action” means *Napoleon Ebarle et al. v. LifeLock, Inc.*,  
9 No. 3:15-cv-258 (N.D. Cal. filed Jan. 19, 2015).

10 3. “Money Received” means money paid as restitution by LifeLock to  
11 Affected Consumers by check, charge-back, or other transfer of funds, to the extent:

- 12 a. Such money was issued by LifeLock pursuant to settlement: (i) of  
13 the Covered Class Action, or (ii) with any State Attorney General’s  
14 Office entered within four (4) months from the date of this Order;
- 15 b. Either: (i) a credit card company, bank, or other financial institution  
16 has credited the Affected Consumer’s financial account with such  
17 money, or (ii) any such check has been cashed by the Affected  
18 Consumer; and
- 19 c. Consumer information involved in payment of such money is  
20 handled in a manner that is consistent with the Commission’s  
21 privacy and data security standards, policies, and practices.

22 For the purpose of clarification, Money Received shall not include any  
23 administrative fees, attorneys’ fees, or any other amount not directly issued  
24 to an Affected Consumer, or any coupons, credits, or other consideration  
25 applicable towards the purchase of products or services offered by  
26 LifeLock or any other entity.

**ORDER**

**IT IS ORDERED** granting the Consent Motion for Entry of Order (Doc. 64).

**I. PERMANENT INJUNCTION**

**IT IS FURTHER ORDERED** that the Permanent Injunction shall remain in full force and effect except Sections VI through IX of the Permanent Injunction as to LifeLock, which are replaced with Sections V through VIII below.

**II. MONETARY JUDGMENT AND CONSUMER REDRESS**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of One Hundred Million Dollars (\$100,000,000) is entered in favor of the Commission against LifeLock as equitable monetary relief.

B. LifeLock shall satisfy the judgment as follows:

1. Pursuant to L.R. Civ. 67.1 and Fed. R. Civ. P. 67, LifeLock shall:

(a) deposit One Hundred Million Dollars (\$100,000,000) (“Settlement Funds”) into the Court’s Registry within five (5)

business days of entry of this Order to be held in escrow for the sole purpose of distributing the funds in accordance with this Order, and

(b) comply fully with all of its obligations under Section II of this Order. LifeLock is hereby authorized to deposit One Hundred Million Dollars (\$100,000,000) into the Court’s Registry.

2. If LifeLock fails to comply with Section II.B.1(a), the judgment amount of One Hundred Million Dollars (\$100,000,000) shall become immediately due and payable to the Commission, and LifeLock shall not have any right to any credit, offset, or any other reimbursement for any Money Received by Affected Consumers as provided in this Order.

C. The Settlement Funds shall include any interest that the funds accrue while in the Court’s Registry, minus costs pursuant to L.R. Civ. 67.1.

1           D.     The Settlement Funds shall be disbursed by motions pursuant to this  
2 Section II, if both of the following conditions are met: (1) LifeLock acts expeditiously to  
3 obtain final court approval of the settlement agreement in the Covered Class Action; and  
4 (2) all such motions are filed by the earlier of eighteen (18) months from the date of this  
5 Order or two hundred seventy (270) days from the date of final court approval of the  
6 settlement agreement in the Covered Class Action.

7           E.     Subject to Section II.D, LifeLock may use up to Sixty Eight Million Dollars  
8 (\$68,000,000) of the Settlement Funds to fund an escrow account established in the  
9 Covered Class Action if all of the following conditions are met:

- 10                   1.     LifeLock has obtained preliminary court approval of the settlement  
11                             agreement in the Covered Class Action; and
- 12                   2.     The agreement governing the escrow fund ensures that:
  - 13                             i.     All payments from the escrow account are issued directly to  
14                                     Affected Consumers for the sole purpose of providing  
15                                     consumer redress;
  - 16                             ii.    All payments from the escrow account either become Money  
17                                     Received by Affected Consumers within one hundred twenty  
18                                     (120) days of such payment or are returned immediately to  
19                                     the escrow account;
  - 20                             iii.   The escrow account transfers all remaining funds, including  
21                                     any interest that has accrued in the escrow account, to the  
22                                     Commission after the expiration of the deadline for motions  
23                                     in Section II.D.2; and
  - 24                             iv.   As many Affected Consumers as reasonably practicable  
25                                     receive payments from the escrow fund.

26           F.     If an agreement governing an escrow account funded pursuant to Section  
27 II.E ceases to comply with any of the criteria in Section II.E.2, or such escrow account  
28 ceases to be administered in compliance with all of the criteria in Section II.E.2,

1 LifeLock shall immediately: (1) deposit into the Court's Registry as Settlement Funds  
2 the amount of money in the escrow fund immediately prior to such non-compliance, or if  
3 the Settlement Funds have already been transferred by the Court to the Commission  
4 under Section II.J, (2) pay such amount directly to the Commission.

5 G. Subject to Sections II.D and H through M, LifeLock shall have a right to  
6 the amount of Settlement Funds remaining in the Court's Registry equal to: (1) Money  
7 Received by Affected Consumers, other than such Money Received that was paid out of  
8 an escrow account funded under Section II.D and compliant with Section II.D.2 at the  
9 time of issuance of payment to the Affected Consumer, plus (2) the interest accrued on  
10 such amount specified in subsection (1) while in the Court's Registry.

11 H. LifeLock shall have a right to seek disbursement of the funds identified in  
12 Section II.G by motion in up to three (3) installments.

13 I. Under no circumstances shall LifeLock receive more than one (1)  
14 disbursement from the Settlement Funds for each payment of Money Received by  
15 Affected Consumers.

16 J. The Commission shall be entitled to all remaining Settlement Funds in the  
17 Court's Registry: (1) upon the Court's resolution of all motions timely filed under this  
18 Section II, or if no such timely filed motion is pending, (2) upon the expiration of the  
19 deadline for motions in Section II.D.2.

20 K. If any portion of the Money Received by Affected Consumers for which  
21 LifeLock received disbursement from the Settlement Funds is returned to LifeLock,  
22 LifeLock shall remit such portion to the Commission within ten (10) business days.

23 L. All money paid to the Commission pursuant to this Order may be deposited  
24 into a fund administered by the Commission or its designee to be used for equitable  
25 relief, including consumer redress and any attendant expenses for the administration of  
26 any redress fund. If a representative of the Commission decides that direct redress to  
27 consumers is wholly or partially impracticable or money remains after redress is  
28 completed, the Commission may apply any remaining money for such other equitable

1 relief (including consumer information remedies) as it determines to be reasonably  
2 related to LifeLock's practices as set forth in this Order. Any money not used for such  
3 equitable relief is to be deposited to the U.S. Treasury as disgorgement. LifeLock has no  
4 right to challenge any actions the Commission or its representatives may take pursuant to  
5 this Subsection.

6 M. LifeLock relinquishes dominion and all legal and equitable right, title, and  
7 interest in all assets transferred to the Court's Registry or to the Commission pursuant to  
8 this Order, except as specified in Sections II.D through II.J.

9 N. Lifelock warrants and represents that as of the date it executes this Order,  
10 after giving effect to Section II, Lifelock will not: (1) be insolvent (either because its  
11 financial condition is such that the sum of its debts is greater than the fair market value of  
12 its assets or because the fair saleable value of its assets is less than the amount required to  
13 pay its probable liabilities on its existing debts as they mature); (2) have unreasonably  
14 small capital with which to engage in its business; or (3) have incurred debts beyond its  
15 ability to pay as they become due.

16 O. LifeLock acknowledges that its Taxpayer Identification Numbers which it  
17 previously submitted to the Commission may be used for collecting and reporting any  
18 delinquent amount arising out of this Order, in accordance with 31 U.S.C. §7701.

19 P. All payments to the Commission under this Order must be made by  
20 electronic fund transfer in accordance with instructions previously provided by a  
21 representative of the Commission.

### 22 **III. CUSTOMER INFORMATION**

23 **IT IS FURTHER ORDERED** that LifeLock shall provide customer information  
24 requested by the Commission to enable the Commission to efficiently administer  
25 customer redress. If a representative of the Commission requests in writing any  
26 information related to redress, LifeLock must provide it, in the form prescribed by the  
27 Commission, within ten (10) days.

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1 **IV. ENTRY OF ORDER**

2 **IT IS FURTHER ORDERED** that there is no just reason for delay of entry of  
3 this Order, and the clerk shall enter this Order immediately.

4 **V. COMPLIANCE REPORTING**

5 **IT IS FURTHER ORDERED** that, in order that compliance with the provisions  
6 of the Permanent Injunction and this Order may be monitored:

7 A. For a period of five (5) years from the date of entry of this Order, LifeLock  
8 shall notify the Commission of any changes in its corporate structure or any business  
9 entity that LifeLock directly or indirectly controls, or has ownership interest in, that may  
10 affect compliance obligations under the Permanent Injunction or this Order, including,  
11 but not limited to: incorporation or other organization; a dissolution, assignment, sale,  
12 merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that  
13 engages in any practices subject to the Permanent Injunction or this Order; or a change in  
14 the business name or address, at least thirty (30) days prior to such change, *provided that*,  
15 with respect to any proposed change in the business entity of which LifeLock learns less  
16 than thirty (30) days prior to the date such action is to take place, LifeLock shall notify  
17 the Commission as soon as practicable after obtaining such knowledge.

18 B. One hundred eighty (180) days after the date of entry of this Order and  
19 annually thereafter for a period of five (5) years, LifeLock shall provide a written report  
20 to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth  
21 in detail the manner and form in which it has complied and is complying with the  
22 Permanent Injunction and this Order. This report shall include, but not be limited to: (1)  
23 a copy of each acknowledgement of receipt of the Permanent Injunction and this Order  
24 obtained pursuant to the Section titled "Distribution of Order;" and (2) any other changes  
25 required to be reported under Subsection A of this Section.

26 C. LifeLock shall notify the Commission of the filing of any bankruptcy  
27 petition, insolvency proceeding, or similar proceeding within fifteen (15) days of its  
28 filing. Unless directed otherwise by a Commission representative in writing, all

1 submissions to the Commission pursuant to this Order must be emailed to  
2 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate  
3 Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,  
4 600 Pennsylvania Avenue, NW, Washington, DC 20580. The subject line must begin:  
5 FTC v. LifeLock, Inc., X100023.

6 **VI. COMPLIANCE MONITORING**

7 **IT IS FURTHER ORDERED** that, for the purpose of monitoring LifeLock's  
8 compliance with the Permanent Injunction and this Order:

9 A. Within fourteen (14) days of receipt of written notice from a representative  
10 of the Commission, LifeLock shall submit additional written reports or other requested  
11 information, which are true and accurate and sworn to under penalty of perjury; produce  
12 documents for inspection and copying; appear for deposition; and provide entry during  
13 normal business hours to any business location in LifeLock's possession or direct or  
14 indirect control to inspect the business operation;

15 B. In addition, the Commission is authorized to use all other lawful means,  
16 including but not limited to:

17 1. Obtaining discovery from any person, without further leave of court,  
18 using any of the procedures prescribed by Federal Rules of Civil  
19 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36,  
20 45, and 69;

21 2. Posing as consumers and suppliers to LifeLock, their employees, or  
22 any other entity managed or controlled in whole or in part by  
23 LifeLock without the necessity of identification or prior notice;

24 C. LifeLock shall permit representatives of the Commission to interview any  
25 employer, consultant, independent contractor, representative, agent or employee who has  
26 agreed to such an interview, relating in any way to any conduct subject to the Permanent  
27 Injunction or this Order. The person interviewed may have counsel present; and  
28

1 D. Nothing in this Order limits the Commission's lawful use of compulsory  
2 process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain  
3 any documentary material, tangible things, testimony, or information relevant to unfair or  
4 deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C.  
5 § 45(a)(1)).

6 **VII. RECORD KEEPING PROVISIONS**

7 **IT IS FURTHER ORDERED** that:

8 LifeLock is hereby restrained and enjoined from failing to create and retain the  
9 following records for the following periods:

10 A. For a period of thirteen (13) years from the date of entry of the Permanent  
11 Injunction, the following records in connection with the sale or provision of products or  
12 services related to identity theft:

- 13 1. Accounting records that reflect the cost of goods or services sold,  
14 revenues generated, and the distribution of such revenues;
- 15 2. Personnel records accurately reflecting: the name, address, and  
16 telephone number of each person employed in any capacity by such  
17 business, including as an independent contractor; that person's job  
18 title or position; the date upon which the person commenced work;  
19 and the date and reason for the person's termination, if applicable;
- 20 3. Consumer files containing the names, addresses, phone numbers,  
21 dollar amounts paid, quantity of items or services purchased, and  
22 description of items or services purchased, to the extent such  
23 information is obtained in the ordinary course of business;
- 24 4. Complaints and refund requests (whether received directly,  
25 indirectly, or through any third party) and any responses to those  
26 complaints and requests;
- 27 5. Copies of all sales scripts, training materials, advertisements, or  
28 other marketing materials;

1           6. Any documents, whether prepared by or on behalf of LifeLock, that  
2           contradict, qualify or call into question LifeLock’s compliance with  
3           Sections I, II, and III of the Permanent Injunction; and

4           7. All records and documents necessary to demonstrate full compliance  
5           with each provision of the Permanent Injunction and this Order,  
6           including but not limited to, copies of acknowledgments of receipt  
7           required by the Permanent Injunction and this Order, all reports  
8           submitted to the FTC pursuant to the Section of this Order titled  
9           “Compliance Reporting.”

10           B. For a period of three (3) years after the date of preparation of each  
11           Assessment required under the Section of the Permanent Injunction titled “Biennial  
12           Assessment Requirements”: All materials relied upon to prepare the Assessment,  
13           whether prepared by or on behalf of LifeLock, including but not limited to all plans,  
14           reports, studies, reviews, audits, audit trails, policies, training materials, and assessments,  
15           and any other materials relating to LifeLock’s compliance with the Section of the  
16           Permanent Injunction titled “Biennial Assessment Requirements.”

17           C. For a period of five (5) years from the date of entry of this Order, records  
18           and documents sufficient to provide all material facts regarding Money Received by  
19           Affected Consumers and the administration of the escrow account funded under Section  
20           II.E, including but not limited to: (1) identity of each Affected Consumer who received a  
21           payment, (2) the amount of each payment, (3) the manner in which LifeLock issued each  
22           payment, (4) the date of each payment, (5) evidence that each payment was credited to an  
23           Affected Consumer’s financial account or was otherwise cashed, and (6) all escrow  
24           account activity and balances.

25           **VIII. DISTRIBUTION OF ORDER**

26           **IT IS FURTHER ORDERED** that:

27           For a period of five (5) years from the date of entry of this Order, LifeLock shall  
28           deliver copies of the Permanent Injunction and this Order as directed below:

