

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

– v. –

AMERICAN EVOICE, LTD., et al.,

Defendants,

and

BIBLIOLOGIC, LTD.,

Relief Defendant.

**CIVIL ACTION
NO. 9:13-cv-00003-DLC**

[PROPOSED]

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND MONETARY JUDGMENT**

WHEREAS on January 8, 2013, Plaintiff Federal Trade Commission (“FTC” or “Commission”) commenced this action for a permanent injunction and

other equitable relief 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; and Relief Defendant Bibliologic, Ltd.; and

WHEREAS Plaintiff FTC alleges in its Complaint that that the 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; and

WHEREAS Plaintiff FTC’s Complaint also alleges that Relief Defendant Bibliologic has received, directly or indirectly, funds and other assets from the Defendants that are traceable to the Defendants’ unlawful activity, that Bibliologic has no legitimate claim to those funds or other assets, that such assets are subject to a constructive trust, and that Bibliologic will be unjustly enriched if it is not required to disgorge the assets or the value of benefits received as a result of Defendants’ unlawful activity; and

WHEREAS Defendant Steven V. Sann filed a petition for relief under Chapter 11 of the Bankruptcy Code on September 29, 2014, *In re Steven Vincent Sann*, No. 14-61370 (Bankr. D. Mont.); and

WHEREAS on April 29, 2015, the Bankruptcy Court entered an order converting the case to a Chapter 7, and Christy L. Brandon was appointed Chapter 7 Trustee of the bankruptcy estate; and

WHEREAS on August 3, 2015, the Chapter 7 Trustee commenced an adversary proceeding against Relief Defendant Bibliologic in Bankruptcy Court, *Brandon v. Bibliologic*, Adv. No. 15-0024 (Bankr. D. Mont.), to recover estate property and set aside certain transfers to Bibliologic as alleged fraudulent conveyances; and

WHEREAS the Chapter 7 Trustee has entered into a settlement agreement with Relief Defendant Bibliologic, subject to Bankruptcy Court approval, that would resolve all matters in dispute between the Chapter 7 Trustee and Bibliologic, and that contains substantially the same asset turnover relief against Bibliologic set forth in Section I.B of this Order; and

WHEREAS Relief Defendant Bibliologic, Ltd. (“Bibliologic”) and Plaintiff FTC have stipulated to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“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. Relief Defendant Bibliologic neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Relief Defendant Bibliologic admits the facts necessary to establish jurisdiction.
3. Relief Defendant Bibliologic waives any claim that it 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 its own costs and attorney fees.
4. Relief Defendant Bibliologic 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. **“Chapter 7 Trustee”** means Christy L. Brandon, as Trustee of the Chapter 7 bankruptcy estate of Steven Vincent Sann, Debtor, in the United States Bankruptcy Court for the District of Montana, Case No. 14-61370-7.
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. **“Estate”** means the Chapter 7 bankruptcy estate of Steven Vincent Sann, Debtor, in the United States Bankruptcy Court for the District of Montana, Case No. 14-61370-7.
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.
7. **“Relief Defendant”** means Bibliologic, Ltd. (“Bibliologic”).

ORDER

I. MONETARY JUDGMENT AND TURNOVER ORDER

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of one hundred thousand dollars (\$100,000) is hereby entered in favor of the Commission against Bibliologic as equitable monetary relief. The Commission and Bibliologic stipulate,

only for purposes of this Section, that this judgment amount represents unjust enrichment received by Bibliologic.

B. Within 10 days of the entry of this Order, Bibliologic shall transfer to the Chapter 7 Trustee and the Estate the following assets:

1. Tract 2D of COS 6245, located in the Northwest Quarter of Section 17, Township 15 North, Range 14 West, Principal Meridian Montana, Missoula County, Montana, according to the Official map or plat thereof on file and of record in the Office of the Clerk and Recorder of said County, containing 94.53 acres, more or less, and including any structures or improvements thereon.
2. All gold and silver in Bibliologic's possession.
3. All other assets in Bibliologic's possession, including but not limited to:
 - a. 1999 Ford Ranger, Yanmar backhoe, 4-wheeler, RV, and trailer identified on the Balance Sheet attached hereto as Exhibit 1.
 - b. All funds in U.S. Bank account ending in -7482.

- c. All funds in U.S. Bank account ending in -8322, except for \$100,000, which Bibliologic may retain subject to Sections I.E through I.G, and Section IV of this Order.
- d. All funds in Charles Schwab investment account ending in -3098.

Provided, however, Bibliologic may retain and need not transfer to the Chapter 7 Trustee any cots, tents, canoes, and similar items of personal property for use in Bibliologic's youth camps.

- C. Within three days of the completion of the transfers required by Section I.B, Bibliologic shall provide the FTC with documentation evidencing each of the required transfers. Bibliologic relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred to the FTC or to the Chapter 7 Trustee pursuant to this Order and may not seek the return of any assets.
- D. Upon completion of the transfers required by Section I.B and the documentation provided to the FTC pursuant to Section I.C, the \$100,000 monetary judgment against Bibliologic in Section I.A is suspended, subject to Sections I.E through I.G below.
- E. The Commission's agreement to the suspension of the monetary judgment is expressly premised upon the truthfulness, accuracy, and

completeness of Bibliologic's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

- Financial Statement of Relief Defendant Bibliologic executed on April 19, 2013, including attachments; and
- Declaration of Carl Sid Graef, dated January 26, 2016.

The suspension of the judgment will be lifted and the entire \$100,000 judgment will become immediately due if, upon motion by the Commission, the Court finds that Bibliologic 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.

- F. The suspension of the judgment will be lifted if, upon motion by the Commission, the Court finds that Bibliologic, either directly or indirectly, has transferred, paid, disbursed, pledged, assigned, loaned, or otherwise made available to any Defendant, any of the \$100,000 retained pursuant to Section I.B.3.c. Upon such a finding, Bibliologic shall immediately disgorge to the FTC whatever remains of the \$100,000, and the portion of the judgment equal to the amount transferred, paid, disbursed, pledged, assigned, loaned, or otherwise

made available to any Defendant will become immediately due. To the extent that the \$100,000 retained pursuant to Section I.B.3.c. may become commingled with after-acquired funds, Bibliologic shall account for the retained funds on a first-in-first-out basis, and the restrictions on the use of the retained funds shall remain in place until no retained funds remain in Bibliologic's possession. For purposes of this Section I.F, the term "Defendant" includes any corporation, partnership, trust, foundation, or any other entity directly or indirectly owned, managed, or controlled by, or under common control with any Defendant.

- G. If the suspension of the judgment is lifted as to Bibliologic, interest shall be due on the amount of the judgment, computed from the date of entry of this Order.

II. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

- A. 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, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

- B. 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.
- C. Bibliologic acknowledges that its Employer Identification Number, which it 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
- D. 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 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 to the U.S. Treasury as disgorgement. Bibliologic has no right to challenge any actions the

Commission or its representatives may take pursuant to this Subsection.

III. MODIFICATION OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze imposed on Bibliologic's assets pursuant to the Stipulated Preliminary Injunction entered on May 8, 2013 (DE 56) is modified to permit the transfers of assets required by Section I of this Order. Upon completion of all the transfers of assets required by Section I, the asset freeze shall be dissolved as to Bibliologic.

IV. PROHIBITION ON USE OF FUNDS

IT IS FURTHER ORDERED that Bibliologic and its officers, agents, servants, employees, and attorneys, 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 permitting any of the \$100,000 retained pursuant to Section I.B.3.c. to inure to the benefit of any Defendant, or to any private shareholder or individual within the meaning of 26 U.S.C. § 501(c)(3).

V. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Bibliologic shall, within 7 days of entry of this Order, submit to the Commission acknowledgments of receipt of this Order signed by each of its directors, and sworn under penalty of perjury.

VI. REPORTING REQUIREMENTS

IT IS FURTHER ORDERED that Bibliologic shall make timely submissions to the Commission.

- A. Bibliologic must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Bibliologic within 14 days of its filing.
- B. Bibliologic shall, by the seventh day of each calendar month, provide the FTC with a listing by category of all expenses paid and income received (including donations) during the preceding calendar month, until none of the \$100,000 retained pursuant to Section I.B.3.c. remains in Bibliologic's possession. Bibliologic shall provide the FTC with documentation of any expenditure greater than \$1,500.00, and documentation of any other expenditures upon the request of the FTC.
- C. 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.

- D. 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 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

The subject line must begin: *FTC v. American eVoice*, X130020.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for purposes of monitoring Bibliologic's compliance with this Order, including the financial representations identified in Section I.E and the transfer of assets required by Section I.B of this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Bibliologic must: submit 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.

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

VIII. 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.

SO ORDERED this ____ day of _____, 2016

HON. DANA L. CHRISTENSEN
CHIEF DISTRICT JUDGE
UNITED STATES DISTRICT COURT

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:



Date: 31 March 2016

RICHARD McKEWEN, WSBA #45041
Federal Trade Commission
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915 Second Ave., Suite 2896
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Counsel for Plaintiff Federal Trade Commission

FOR RELIEF DEFENDANT BIBLIOLOGIC:

Date: _____

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Counsel for Relief Defendant Bibliologic

Date: _____

Carl Sid Graef
President, Relief Defendant Bibliologic, Ltd.

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

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Date: _____

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Date: 1/27/2016

Counsel for Relief Defendant Bibliologic

BIBLIOLOGIC, LTD.



Carl Sid Graef
President, Relief Defendant Bibliologic, Ltd.

Date: 1/26/16

EXHIBIT 1

Property	Current value	Notes
Tract 2D of COS 6245 (property on Clearwater Junction)	\$1,283,000	Property is encumbered by a mortgage in the approximate amount of \$1.5 million
Gold and Silver	\$630,026.00	Value as of 12/4/15 Date of Transfer (2011) value: \$1,359,264.16 Value is based on the detail of gold and metals detailed by the donor. Current members of the Bibliologic board have not opened the containers to verify metals count.
US Bank Account – x7482	\$550.00	
US Bank Account – x8322	\$364,858.92	
1999 Ford Ranger	\$6,000.00	
Yanmar Backhoe	\$35,000.00	
4-Wheeler	\$4,400.00	
RV	\$21,000.00	
Trailer	\$7,000.00	
Charles Schwab Investment Account	\$21.70	
2008 Honda 250	\$3,220	← current value. Not Sure what we paid for it.