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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NUTRACLICK, LLC,

Defendants.

Case No. 2:16-cv-06819-DMG

**STIPULATED ORDER FOR
COMPENSATORY
CONTEMPT SANCTIONS**

On September 20, 2016, the Court entered the Order for Permanent Injunction and Monetary Judgment (DE # 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
22 Complaint for Permanent Injunction and Other Equitable Relief in *FTC v.*
23 *NutraClick, LLC, et al.* (“Complaint”), Case No. 2:20-cv-08612 (C.D. Cal.),
24 alleging that NutraClick and its officers in connection with charging or
25 attempting to charge consumers for products sold through a negative option
26 feature, did not clearly and conspicuously disclose all material terms of the
27 transaction, such as the billing date that consumers would be charged, before
28

1 obtaining consumers' billing information or consent to pay, in violation of
2 ROSCA and the TSR.

3 5. The Commission alleges the conduct described in the Complaint violates
4 the Stipulated Order.

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

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

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

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

17 **DEFINITIONS**

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

19 A. **"Corporate Defendant"** means NutraClick, LLC and its successors and
20 assigns.

21 B. **"Contempt Defendants"** means Corporate Defendant and both Individual
22 Defendants, individually, collectively, or in any combination.

23 C. **"Individual Defendants"** means Daniel Wallace and Patrick Carroll.

24 **ORDER**

25 **I. MONETARY JUDGMENT**

26 IT IS ORDERED that:

27 A. Judgment in the amount of one million thirty-nine thousand eight hundred
28 twenty-four dollars and twenty-four cents (\$1,039,824.24) is entered in favor of

1 the Commission against Contempt Defendants, jointly and severally, as
2 compensatory contempt relief.

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

10 **II. ADDITIONAL MONETARY PROVISIONS**

11 IT IS FURTHER ORDERED that:

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

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

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

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

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

13 **III. CUSTOMER INFORMATION**

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

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IV. RETENTION OF JURISDICTION

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

SO ORDERED this ____ day of _____, 2020.

THE HONORABLE DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF:



Date: 9/21/2020

BRIAN M. WELKE
DELILAH VINZON
Attorneys for Plaintiff Federal Trade Commission

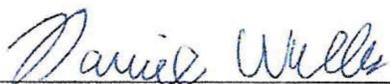
FOR DEFENDANTS:



Date: 3-18-20

LEONARD L. GORDON, ESQ.
ELLEN TRAUPTMAN BERGE, ESQ.
Venable LLP
Attorneys for Defendant NutraClick, LLC

DEFENDANTS DANIEL WALLACE AND NUTRACLICK, LLC



Date: 3/18/20

DANIEL WALLACE, INDIVIDUALLY
AND AS AN OFFICER OF NUTRACLICK, LLC

DEFENDANT PATRICK CARROLL:



Date: 3/18/20

PATRICK CARROLL, INDIVIDUALLY
AND AS AN OFFICER OF NUTRACLICK, LLC