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

11 FEDERAL TRADE COMMISSION,
12

13 Plaintiff,

14 v.

15 NUTRACLICK, LLC,
16

17 Defendants.

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


**STIPULATION TO
STIPULATED ORDER FOR
COMPENSATORY
CONTEMPT SANCTIONS**

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19 On September 20, 2016, this Court entered its Order for Permanent
20 Injunction and Monetary Judgment (DE # 7) (the “Stipulated Order”), resolving
21 the Federal Trade Commission’s (“Commission” or “FTC”) allegations that
22 NutraClick, LLC (“NutraClick”) violated Section 5 of the Federal Trade
23 Commission Act (“FTC Act”), 15 U.S.C. § 45, and Section 4 of the Restore
24 Online Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8403. The
25 Commission and Contempt Defendants NutraClick, LLC, Daniel Wallace, and
26 Patrick Carroll hereby stipulate to the entry of a Stipulated Order for
27 Compensatory Sanctions (filed concurrently) to resolve all matters in dispute in
28

1 this action between them. The terms of the accompanying Proposed Order follow
2 below.


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4 **SO STIPULATED AND AGREED:**

5 **FOR PLAINTIFF:**

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

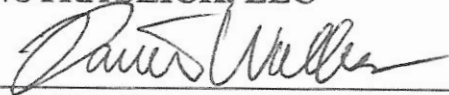
Date: 9/21/2020

12 **FOR CONTEMPT DEFENDANTS:**

13 
14 _____
15 LEONARD L. GORDON, ESQ.
16 ELLEN TRaupMAN BERGE, ESQ.
17 Venable LLP
18 Attorneys for Defendant NutraClick, LLC

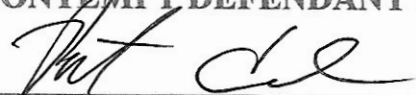
Date: 9-16-20

19 **CONTEMPT DEFENDANTS DANIEL WALLACE AND**
20 **NUTRACLICK, LLC**

21 
22 _____
23 DANIEL WALLACE, INDIVIDUALLY
24 AND AS AN OFFICER OF NUTRACLICK, LLC

Date: 9/16/2020

25 **CONTEMPT DEFENDANT PATRICK CARROLL:**

26 
27 _____
28 PATRICK CARROLL, INDIVIDUALLY
AND AS AN OFFICER OF NUTRACLICK, LLC

Date: 9/16/2020

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1 **TERMS OF THE PROPOSED ORDER**

2 **FINDINGS**

- 3 1. This Court has jurisdiction over this matter.
- 4 2. The Stipulated Order entered by this Court on September 20, 2016, is valid
5 and unambiguous. The Court entered the Stipulated Order enjoining NutraClick
6 and its officers from, *inter alia*, (1) misrepresenting the length of consumers’ trial
7 periods before consumers are charged or billed and the timing of any charge or
8 bill (Sections I.G, I.F); (2) failing to disclose clearly and conspicuously and in
9 close proximity to consumers’ provision of billing information the deadline by
10 which consumers must act in order to stop all recurring charges (Section II.A.3);
11 (3) failing to send consumers who purchased goods or services through a
12 Negative Option Feature written confirmation including clear and conspicuous
13 disclosures of the terms of the Negative Option Feature specifically including the
14 deadline by which consumers must act to stop a recurring charge (Section II.B);
15 and (4) violating ROSCA by failing to clearly and conspicuously disclose the
16 deadline by which consumers must act to avoid a recurring charge, before
17 obtaining consumers’ billing information (Section V).
- 18 3. Contempt Defendants had notice of the Stipulated Order.
- 19 4. On September 21, 2020, the Commission filed with this Court a Complaint
20 for Permanent Injunction and Other Equitable Relief in *FTC v. NutraClick, LLC,*
21 *et al.* (“Complaint”), Case No. 2:20-cv-08612 (C.D. Cal.), alleging that
22 NutraClick and its officers in connection with charging or attempting to charge
23 consumers for products sold through a negative option feature, did not clearly and
24 conspicuously disclose all material terms of the transaction, such as the billing
25 date that consumers would be charged, before obtaining consumers’ billing
26 information or consent to pay, in violation of ROSCA and the TSR.
- 27 5. The Commission alleges the conduct described in the Complaint violates
28 the Stipulated Order.

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

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

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

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

13 **DEFINITIONS**

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

15 A. **“Corporate Defendant”** means NutraClick, LLC and its successors and
16 assigns.

17 B. **“Contempt Defendants”** means Corporate Defendant and both Individual
18 Defendants, individually, collectively, or in any combination.

19 C. **“Individual Defendants”** means Daniel Wallace and Patrick Carroll.

20 **ORDER**

21 **I. MONETARY JUDGMENT**

22 IT IS ORDERED that:

23 A. Judgment in the amount of one million thirty-nine thousand eight hundred
24 twenty-four dollars and twenty-four cents (\$1,039,824.24) is entered in favor of
25 the Commission against Contempt Defendants, jointly and severally, as
26 compensatory contempt relief.

27 B. Contempt Defendants are ordered to pay to the Commission one million
28 thirty-nine thousand eight hundred twenty-four dollars and twenty-four cents

1 (\$1,039,824.24), which, as Contempt Defendants stipulate, their undersigned
2 counsel holds in escrow for no purpose other than payment to the Commission.
3 Such payment must be made within 7 days of entry of this Contempt Order by
4 electronic fund transfer in accordance with instructions provided by a
5 representative of the Commission.

6 **II. ADDITIONAL MONETARY PROVISIONS**

7 IT IS FURTHER ORDERED that:

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

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

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

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

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

1 remains after redress is completed, the Commission may apply any remaining
2 money for such other equitable relief (including consumer information remedies)
3 as it determines to be reasonably related to Contempt Defendants' practices
4 described in the Findings section above. Any money not used for such equitable
5 relief is to be deposited to the U.S. Treasury as disgorgement. Defendants have
6 no right to challenge any actions the Commission or its representatives may take
7 pursuant to this Subsection.

8 **III. CUSTOMER INFORMATION**

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

18 **IV. RETENTION OF JURISDICTION**

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

I hereby certify that on September 21, 2020, I caused a true and correct copy of this STIPULATION TO STIPULATED ORDER FOR COMPENSATORY CONTEMPT SANCTIONS and the proposed order to be served by the following means on the following persons:

By email, consented to in writing, pursuant to Fed. R. Civ. P. 5(b)(2)(e):

Leonard L. Gordon
VENABLE LLP
1270 Avenue of the Americas, 24th Floor
New York, NY 10020
Phone: (212) 370-6252
Fax: (212) 307-5598
Email: lgordon@Venable.com
Attorney for Contempt Defendants NutraClick, LLC; Daniel Wallace; and Patrick Carroll



Brian M. Welke