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ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

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

FEDERAL TRADE COMMISSION,

Pl

– v. –

**AMERICAN EVOICE, LTD.,
EMERICA MEDIA CORPORATION,
FONERIGHT, INC.,
GLOBAL VOICE MAIL, LTD.,
HEARYOU2, INC.,
NETWORK ASSURANCE, INC.,
SECURATDAT, INC.,
TECHMAX SOLUTIONS, INC.,
VOICE MAIL PROFESSIONALS, INC.,**

**STEVEN V. SANN,
TERRY D. LANE, ~~and~~ TERRY D. SANN,
NATHAN M. SANN,
ROBERT M. BRAACH,**

Df

CIVIL ACTION

NO. _ _ _ _

**COMPLAINT FOR
PERMANENT
INJUNCTION AND
OTHER EQUITABLE
RELIEF**

and

BIBLIOLOGIC, LTD.,

RDA

Missoula, MT 59801. Defendant GVM transacts or has transacted business in this District and throughout the United States.

9. Defendant HearYou2, Inc. (“HearYou2”), is a Nevada corporation with a registered business address at 2360 Corporate Circle, Suite 400, Henderson, NV 89074. Since 2008, Defendant HearYou2 has utilized a number of different mailing addresses, including 2120 S. Reserve St., PMB 210, Missoula, MT 59801. Defendant HearYou2 transacts or has transacted business in this District and throughout the United States.
10. Defendant Network Assurance, Inc. (“Network Assurance”), is a Nevada corporation with a registered business address at 2360 Corporate Circle, Suite 400, Henderson, NV 89074. Since 2008, Defendant Network Assurance has utilized a number of different mailing addresses, including 2120 S. Reserve St., PMB 349, Missoul

Missoula, MT 59801. Defendant SecurDat transacts or has transacted business in this District and throughout the United States.

and a director of Defendants Emerica Media and GVM, and president of Defendant HearYou2 and Relief Defendant Bibliologic. He is a signatory on bank accounts for Defendants American eVoice, Emerica Media, FoneRight,

16. Defendant Nathan M. Sann is a resident of Missoula, Montana. Defendant Nathan M. Sann is the president, secretary, treasurer, and a director of Defendant SecurDat. He is a signatory on bank accounts for Defendants Emerica Media, GVM, Network Assurance, SecurDat, Techmax, and VMP. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the unlawful acts and practices set forth in this Complaint. In connection with the matters alleged herein, Defendant Nathan M. Sann transacts or has transacted business in this District and throughout the United States.
17. Defendant Robert M. Braach is a resident of Missoula, Montana. Defendant Robert M. Braach is the chief operating officer of Defendant Emerica Media and the regulatory manager for Defendants American eVoice, Emerica Media, FoneRight, GVM, HearYou2, Network Assurance, SecurDat, Techmax, and VMP. He was the incorporator and former treasurer of Relief Defendant Bibliologic. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the unlawful acts and practices set forth in this Complaint. In connection with the matters alleged herein,

Defendant Robert M. Braach transacts or has transacted business in this District and throughout the United States.

18. Relief Defendant Bibliologic, Ltd. (“Bibliologic”), is a Montana corporation with a registered address of 1001 E. Broadway St., Stop 2, Missoula, MT 59802. Since its creation in 2009, Bibliologic has utilized a number of different mailing addresses, including 2120 S. Reserve St., PMB 365, Missoula, MT 59801. Despite being registered with the State of Montana as a nonprofit corporation, Bibliologic has received ill-gotten assets that can be traced directly to Defendants’ unlawful acts or practices alleged in this Complaint, and the entity has no legitimate claim to those assets.

COMMON ENTERPRISE

19. Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, and office locations, and have commingled funds. As a result, Corporate Defendants American eVoice, Emerica Media, FoneRight, GVM, HearYou2, Network Assurance, SecurDat, Techmax, and VMP have operated as a common enterprise while engaging in the unfair and deceptive acts and practices alleged below. Because these Corporate Defendants have operated as a common enterprise, each of them

is jointly and severally liable for the acts and practices alleged below.

Defendants Steven V. Sann, Terry D. Lane, Nathan M. Sann, and Robert M. Braach formulate, direct, control, have the authority to control, or participate in the acts and practices of the Corporate Defendants that constitute the common enterprise.

COMMERCE

20. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ BUSINESS PRACTICES

21. Since at least January 2008, Defendants have caused recurring charges to appear on consumers’ monthly telephone bills for telecommunications services that consumers neither requested nor authorized. The charges are purportedly for voice mail services, electronic fax services, or other non-call-related services.
22. Defendants have initiated these charges by transmitting billing data to companies known as “billing aggregators,” including BSG Clearing Solutions, ILD Telecommunications, Inc., and Transaction Clearing, LLC. These billing aggregators have business relationships with consumers’ local

telephone companies (known as “local exchange carriers” or “LECs”), including Verizon, AT&T, and Frontier. The billing aggregators forward Defendants’ billing data for each consumer to the appropriate LEC, and the LEC then places the charges for the purported services on the consumer’s monthly telephone bill. The charges billed on behalf of Defendants usually appear on one of the last pages of a consumer’s multi-page telephone bill.

23. In numerous instances, Defendants initiated and placed on consumers’ telephone bills charges that consumers never authorized, a practice known as “cramming.”
24. The recurring charges crammed by Defendants onto consumers’ telephone bills range from \$9.95 to \$24.95 per month plus associated taxes and fees. A consumer’s telephone bill identifies both the specific Defendant responsible for initiating the charge, as well as the billing aggregator that transmitted the billing information to the consumer’s LEC.
25. Some consumers notice the unauthorized charge the first month it appears on the consumer’s telephone bill. Many consumers, however, do not notice the unauthorized charges until a year or longer has passed, when the consumer has already paid hundreds of dollars in unauthorized charges. Some consumers never notice the charges.

26. Consumers who notice the unauthorized charges can dispute them by contacting their LEC, the applicable billing aggregator, or Defendants themselves. The LECs, the billing aggregators, and Defendants all have the ability to issue credits for the charges placed on consumers' bills, and they will normally issue credits for up to three months of charges whenever a consumer asks. However, Defendants will often issue credits for more than three months of charges only when the LECs require them to, or when consumers are persistent in their demands or complain to the Better Business Bureau or state or federal regulators. In many cases, it can take several months and repeated inquiries before the consumer gets a full refund.
27. Since January 2008, Defendants have caused over \$70 million in charges to appear on consumers' telephone bills. The billing aggregators, after subtracting returns, fees for excessive credits and refunds, service fees, and other expenses, have remitted to Defendants over \$26 million in net revenues resulting from those charges.
28. In December 2009, Defendant Robert M. Braach incorporated Relief Defendant Bibliologic as a Montana nonprofit corporation. Defendant Braach is the former treasurer of Relief Defendant Bibliologic, and Defendant Steven V. Sann has been its president since its creation.

29. Since December 2009, Defendants have transferred substantial sums and real property to Relief Defendant Bibliologic. Those sums and property represent ill-gotten assets derived from the unlawful acts and practices alleged in this Complaint, and Bibliologic has no legitimate claim to those assets.
30. Relief Defendant Bibliologic retains funds solely for the benefit of Defendants Steven V. Sann and Robert M. Braach and, at their direction, has distributed funds to, among others, Defendant Emerica Media and lawyers retained by Sann to represent him in personal matters unrelated to any charitable purpose.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

31. Section 5(a) of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a). Acts or practices are unfair under Section 5(a) of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition. *Id.* § 45(n). Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I
UBIP

32. In numerous instances, Defendants have placed, directly or indirectly,

36. In truth and in fact, in numerous instances, the consumer was not obligated to pay the charge, because the consumer never authorized the charge or received the services.
37. Therefore, Defendants' representations as set forth in Paragraph 35 are false or misleading and constitute deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

~~DIGITAL~~ ~~FRDB~~

38. Relief Defendant Bibliologic has received, directly or indirectly, funds and other assets from Defendants that are traceable to funds obtained from Defendants' customers through the unlawful acts or practices described herein.
39. Relief Defendant Bibliologic has no legitimate claim to Defendants' customers' funds or other assets and 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 acts or practices.
40. By reason of the foregoing, Relief Defendant Bibliologic holds funds and assets in constructive trust for the benefit of Defendants' consumers.

CONSUMER INJURY

41. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURTS POWER TO GRANT RELIEF

42. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten assets, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, a preliminary injunction and an order freezing assets;
- B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
- C. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten assets;
- D. Enter an order requiring Relief Defendant Bibliologic to disgorge all funds and assets, or the value of the benefit it received from the funds and assets, which are traceable to Defendants' unlawful acts or practices; and
- E. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

