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JS-6



1 ill-gotten gains, and other equitable relief for Defendant's acts or practices in
2 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

3 The Clerk, having found Defendant Phillip Flora in default, and the
4 Commission, having moved for entry of default judgment on all counts of the
5 Complaint against Defendant Flora, **IT IS THEREFORE ORDERED,**
6 **ADJUDGED, AND DECREED** as follows:

7 **FINDINGS**

8 1. This is an action by the Commission instituted under Sections 13(b) of
9 the FTC Act, 15 U.S.C. §§ 53(b). Pursuant to these Sections of the FTC Act, the
10 Commission has the authority to seek the relief contained herein.

11 2. The Complaint states a claim upon which relief may be granted under
12 Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

13 3. This Court has jurisdiction over the subject matter of this case and
14 personal jurisdiction over Defendant Flora.

15 4. Venue in the United States District Court for the Central District of
16 California is proper pursuant to 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b).

17 5. The activities of Defendant Flora are “in or affecting commerce” as
18 “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

19 6. Defendant Flora was served with process in this matter. Defendant
20 Flora thereafter failed to file an answer to the Complaint within the time set forth
21 by Rule 12(a) of the Federal Rules of Civil Procedure, or to otherwise defend this
22 action. On June 19, 2013, the Clerk of Court entered an order of default as to
23 Defendant Flora. The Commission now is entitled to a default judgment, pursuant
24 to Rule 55(b) of the Federal Rules of Civil Procedure, as to Defendant Flora.

25 7. The factual allegations in the FTC’s Complaint are taken as true
26 against Flora. Based on these facts, the Court now finds that, in the course of
27 sending, or assisting others in sending, millions of Unauthorized or Unsolicited
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1 Commercial Electronic Text Messages to mobile telephones or other wireless
2 devices, Defendant Flora violated Section 5(a) of the FTC Act by falsely
3 representing, directly or indirectly, expressly or by implication, that consumers had
4 won a contest or been specially selected to receive a gift or prize that was without
5 cost or obligation.

6 8. The Court further finds that Defendant Flora violated Section 5 of the
7 FTC Act through his practice of initiating or procuring the transmission of
8 Unauthorized or Unsolicited Commercial Text Messages to the mobile telephone
9 phones and other wireless devices of consumers, which has caused or was likely to
10 cause substantial injury to consumers that consumers could not reasonably avoid
11 themselves and that was not outweighed by counterveiling benefits to consumers
12 or competition. 15 U.S.C. § 45(a) and 45(n).

13 9. Defendant Flora is likely to continue to engage in the acts and
14 practices alleged in the Complaint unless he is permanently enjoined from such
15 acts and practices.

16 10. Defendant Flora received \$148,309 in revenues from the conduct
17 alleged in the Complaint. The Commission is therefore entitled to equitable
18 monetary relief against Defendant Flora in the amount of \$148,309. *See FTC v.*
19 *Neovi, Inc.*, 604 F.3d 1150 (9th Cir. 2010) (“Disgorgement should include all gains
20 flowing from the illegal activities.”) (citation omitted).

21 11. This Order is in addition to, and not in lieu of, any other civil or
22 criminal remedies that may be provided by law.

23 12. Entry of this Order is in the public interest.

24 13. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of
25 this Order are binding upon Defendant Flora, his officers, agents, servants,
26 employees, and attorneys, and upon all other persons in active concert or
27 participation with any of them who receive actual notice of this Order by personal
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service or otherwise.

DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. **“Person”** means a natural person, an ~~entity, partnership, trust, or other legal entity~~ (DHP@KHP)G

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II.

PROHIBITED BUSINESS PRACTICES

IT IS FURTHER ORDERED that Defendant, Defendant’s 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, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, are permanently restrained and enjoined from:

A. Misrepresenting, or assisting others in misrepresenting, any material fact, expressly or by implication, including, but not limited to:

1. that a good or service is “free;”
2. that a good or service is without cost or obligation;
3. that consumers have won a contest or have been selected to receive a gift or prize;
4. that consumers' personal information is being collected to send consumers merchandise;
5. the purpose for which consumers are providing personal information;
6. that personal information submitted by consumers will not be sold or shared with third parties.
7. the extent to which the privacy and confidentiality of consumers’ personal information is maintained and protected, including, but not limited to:
 - a. the purposes for which that information is collected and disclosed; and
 - b. the extent to which consumers’ personal information is made or has been made accessible to third parties.

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III.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of One Hundred Forty Eight Thousand, Three Hundred Ten Dollars (\$148,310) is entered in favor of the Commission against Defendant Phillip Flora as equitable monetary relief;

B. Upon entry of this Order, this monetary judgment shall become immediately due and payable by Defendant, and interest, computed pursuant to 28 U.S.C. § 1961(a), as amended, immediately shall begin to accrue upon the unpaid balance.

C. All payments under this Section shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with directions provided by counsel for the Commission.

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 Defendant's practices alleged in the Complaint. Any money not used for such equitable relief is to be deposited into the United States Treasury as disgorgement. Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Section.

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1 this Order to: (1) all principals, officers, directors, and LLC managers and
2 members; (2) all employees, agents, and representatives who participate in conduct
3 related to the subject matter of this Order; and (3) any business entity resulting
4 from any change in structure as set forth in the Section titled Compliance
5 Reporting. Delivery must occur within 7 days of entry of this Order for current
6 personnel. For all others, delivery must occur before they assume their
7 responsibilities.

8 C. From each individual or entity to which Defendant delivered a copy of
9 this Order, Defendant must obtain, within 30 days, a signed and dated
10 acknowledgment of receipt of this Order.

11 **VI.**

12 **COMPLIANCE REPORTING**

13 **IT IS FURTHER ORDERED** that Defendant make timely submissions to
14 the Commission:

15 A. 180 days after entry of this Order, and annually thereafter for ten (10)
16 years, Defendant must submit a compliance report, sworn under pe
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24 **VI.**
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1 including the goods and services offered, the means of advertising, marketing, and
2 sales, and the involvement of any other Defendant (which Defendant must describe
3 if he knows or should know due to his own involvement); (7) describe in detail
4 whether and how Defendant is in compliance with each Section of this Order; (8)
5 provide a copy of each Order Acknowledgment obtained pursuant to this Order,
6 unless previously submitted to the Commission; and (9) either certify that
7 Defendant has not engaged in any conduct banned by Section I of this Order, such
8 as through the execution and submission to the Commission of the Certification
9 attached to this Order, or provide a full written explanation of any banned conduct
10 engaged in by Defendant.

11 B. For twenty (20) years after entry of this Order, Defendant must submit
12 a compliance notice, sworn under penalty of perjury, within 14 days of any change
13 in the following: (1) name, including aliases or fictitious name, or residence
14 address; (2) title or role in any business activity, including any business for which
15 Defendant performs services whether as an employee or otherwise and any entity
16 in which Defendant has any ownership interest, and identify the name, physical
17 address, and Internet address of the business or entity; (3) any designated point of
18 contact; or (4) the structure of any entity that Defendant has any ownership interest
19 in or controls directly or indirectly that may affect compliance obligations arising
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1 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
2 the laws of the United States of America that the foregoing is true and correct.
3 Executed on: _____” and supplying the date, signatory's full name, title (if
4 applicable), and signature.

5 E. Unless otherwise directed by a Commission representative in writing,
6 all submissions to the Commission pursuant to this Order must be emailed to
7 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
8 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
9 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
10 subject line must begin: FTC v. Phillip Flora, FTC Matter No. X130039.

11 **VII.**

12 **RECORDKEEPING**

13 **IT IS FURTHER ORDERED** that Defendant must create certain records
14 for twenty (20) years after entry of the Order, and retain each such record for 5
15 years. Specifically, Defendant for any business in which he is a majority owner or
16 controls directly or indirectly, must create and retain the following records:

17 A. Accounting records showing the revenues from all goods or services
18 sold;

19 B. Personnel records showing, for each person providing services,
20 whether as an employee or otherwise, that person's: name, addresses, and
21 telephone numbers; job title or position; dates of service; and, if applicable, the
22 reason for termination;

23 C. Records of all consumer complaints and refund requests, whether
24 received directly or indirectly, such as through a third party, and any response;

25 D. All records necessary to demonstrate full compliance with each
26 provision of this Order, including all submissions to the Commission; and
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E. For any goods or services that Defendant sells or assists others to sell, a copy of each advertisement or other marketing material regarding such goods or services.

VIII.
COMPLIANCE MONITORING
IT IS FURTHER ORDERED

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

1 commercial product or service (including the content on an Internet website
2 operated for commercial purposes).”

3 4. I hereby certify that during the past year, I have not engaged in any
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5 conduct banned by Section I of the Order.

6 I declare under penalty of perjury under the laws of the United States of America
7 that the foregoing is true and correct.
8

9 Executed on _____, 201__.

10
11 _____
12 Philip Flora

13
14 State of _____, City of _____

15
16 Subscribed and sworn to before me
17 this _____ day of _____, 201__.

18
19 _____
20 Notary Public

21 My commission expires:
22 _____

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