

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JESSE WILLMS, individually and as a director or owner of 1021018, 1016363, and 1524948 Alberta Ltd; Circle Media Bids Limited; Coastwest Holdings Limited; Farend Services Ltd; JDW Media, LLC; Net Soft Media, LLC; Sphere Media, LLC; True Net, LLC; and Mobile Web Media, LLC;
PETER GRAVER, individually and as an officer of JDW Media, LLC;
ADAM SECHRIST, individually and as a director and shareholder of Circle Media Bids Limited and manager of Sphere Media, LLC;
BRETT CALLISTER, individually and as an officer of True Net, LLC;
CAREY L. MILNE, individually and as an officer of Net Soft Media, LLC;
ELIZABETH GRAVER, individually and as an officer of Mobile Web Media, LLC;

Case No. 2:11-cv-828-MJP

STIPULATED FINAL JUDGMENT AND ORDER FOR PERMANENT INJUNCTION AND MONETARY RELIEF AS TO BRETT CALLISTER

1 **1021018 ALBERTA LTD**, also d.b.a.
2 Just Think Media, Credit Report America,
3 eDirect Software, WuLongsource, and Wuyi
4 Source;
5 **1016363 ALBERTA LTD**, also d.b.a.
6 eDirect Software;
7 **1524948 ALBERTA LTD**, also d.b.a. Terra
8 Marketing Group, SwipeBids.com, and
9 SwipeAuctions.com;
10 **CIRCLE MEDIA BIDS LIMITED**, also
11 d.b.a. SwipeBids.com, SwipeAuctions.com,
12 and Selloffauctions.com;
13 **COASTWEST HOLDINGS LIMITED**;
14 **FAREND SERVICES LTD**;
15 **JDW MEDIA, LLC**;
16 **NET SOFT MEDIA, LLC**, also d.b.a.
17 SwipeBids.com;
18 **SPHERE MEDIA, LLC**, also d.b.a.
19 SwipeBids.com and SwipeAuctions.com;
20 **TRUE NET, LLC**, also d.b.a.
21 Selloffauctions.com; and
22 **MOBILE WEB MEDIA, LLC**;

23 Defendants.

24 Plaintiff, Federal Trade Commission ("Commission"), filed its Complaint for a
25 permanent injunction and other equitable relief in this matter pursuant to Section 13(b) of the
26 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and Section 917(c) of the
27 Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693o(c). The Commission and defendant
28 Brett Callister stipulate to entry of this Stipulated Final Judgment and Order for Permanent
Injunction and Monetary Relief ("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 the subject matter of this case and all of the parties pursuant to 15 U.S.C. §§ 45(a), 53(b), and 1693o(c), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

1 2. Venue is proper in this District under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b), (c), and
2 (d).

3 3. The activities of defendant Brett Callister, as alleged in the Complaint, are “in or
4 affecting commerce,” as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5 4. The Complaint states a claim upon which relief may be granted against defendant Brett
6 Callister under Section 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

7 5. Defendant Brett Callister does not admit any allegations of the Complaint, except for
8 facts necessary to establish jurisdiction and as otherwise specifically stated in this Order.

9 6. Plaintiff and defendant Brett Callister waive all rights to appeal or otherwise challenge or
10 contest the validity of this Order.

11 7. Defendant Brett Callister waives any claim that he may hold under the Equal Access to
12 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date
13 of this Order, and agrees to bear his own costs and attorneys fees.

14 **DEFINITIONS**

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

16 1. **“Affiliate Network”** means any person or entity that operates an Affiliate Program using
17 third-party marketers.

18 2. **“Affiliate Program(s)”** means any arrangement under which the defendant pays, offers
19 to pay, or provides or offers to provide any form of consideration to any third party to
20 market, advertise, or offer for sale any product or service on behalf of the defendant or
21 his clients including, but not limited to, by providing the defendant or his clients with, or
22 referring to the defendant or his clients, potential or actual customers.

23 3. **“Assist others” or “assisting others”** means providing products or services to another
24 person or entity including, but not limited to (a) formulating, developing, or providing, or
25 arranging for the formulation, development, or provision of, any advertising or marketing
26 content; (b) performing advertising or marketing services of any kind including, but not
27 limited to, soliciting endorsements or testimonials, selecting sponsored search result
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1 terms or the criteria for contextual or behavioral advertising delivery; tracking, testing,
2 optimizing, or otherwise assessing the efficacy of any advertisement; registering or
3 advising others about the registration of domain names; presenting or making available to
4 others the opportunity to participate in any advertising campaign or to act as a publisher
5 of advertising or driving traffic to any web page, URL, or mobile application; (c)
6 providing names, or assisting in the generation, of potential customers; or (d) processing
7 or arranging for processing of credit card, debit card, Automated Clearinghouse ("ACH")
8 debits, remotely-created checks, or payments through any other system.

9 4. **"Corporate Defendants"** means 1021018 Alberta Ltd, also d.b.a. Just Think Media,
10 Credit Report America, Wulongsource, and Wuyi Source; 1016363 Alberta Ltd, also
11 d.b.a. eDirect Software; 1524948 Alberta Ltd, also d.b.a. Terra Marketing Group,
12 SwipeBids.com, and SwipeAuctions.com; Circle Media Bids Limited, also d.b.a.
13 SwipeBids.com, SwipeAuctions.com, and Selloffauctions.com; Coastwest Holdings
14 Limited; Farend Services Ltd; JDW Media, LLC; Net Soft Media, LLC, also d.b.a.
15 SwipeBids.com; Sphere Media, LLC, also d.b.a. SwipeBids.com and SwipeAuctions.com;
16 True Net, LLC, also d.b.a. Selloffauctions.com; Mobile Web Media, LLC, and their
17 successors and assigns.

18 5. **"Marketing Affiliate"** means any person or entity with whom defendants are in direct
19 privity who participates with defendants in marketing any product or service.

20 6. **"Product or service"** includes merchandise, goods, plans, and programs.

21 ORDER

22 I. MISREPRESENTATIONS TO THIRD PARTIES

23 **IT IS FURTHER ORDERED** that, in connection with procuring services from third
24 parties including, but not limited to, affiliate networks, payment processors, banks or other
25 financial institutions, marketing affiliates, customer service providers, lead brokers, web
26 designers, and fulfillment houses, defendant Brett Callister and his officers, agents, servants,
27 employees, attorneys, and all other persons in active concert or participation with any of them

1 who receive actual notice of this Order by personal service or otherwise, are permanently
2 restrained and enjoined from:

- 3 A. Making, or assisting others in making, directly or indirectly, expressly or by
4 implication, any false or misleading material representation including, but not
5 limited to, misrepresentations about:
- 6 1. The control or affiliation between any person or entity seeking to procure
7 services and any other person or entity;
 - 8 2. The nature, terms, conditions, and disclosures associated with the
9 advertising, marketing, promoting, offering for sale, or sale of any product
10 or service offered by defendants; and
 - 11 3. Third party approvals or endorsements, or the substantiation for or the
12 legality of advertising claims for any product or service offered for sale by
13 defendants;
- 14 B. Failing to disclose to any payment processor or financial institution the following
15 information: (1) the identity of the owner, manager, director, or officer of the
16 applicant for or holder of a merchant account, and (2) any material connection
17 between the owner, manager, director, or officer of the applicant for or holder of a
18 merchant account and any third party who has been or is placed in a merchant
19 account monitoring program, has had a merchant account terminated by a
20 payment processor or a financial institution, or has been fined or otherwise
21 disciplined in connection with a merchant account by a payment processor or a
22 financial institution; and
- 23 C. Engaging in any practice that would have the effect of circumventing any
24 chargeback monitoring program or other risk management program implemented
25 by a credit card payment association.
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1 **II. PROHIBITION ON COLLECTING PAST ACCOUNTS**

2 **IT IS FURTHER ORDERED** that defendant Brett Callister and his officers, agents,
3 servants, employees, and attorneys, and all other persons in active concert or participation with
4 any of them who receive actual notice of this Order by personal service or otherwise, are
5 permanently restrained and enjoined from attempting to collect, collecting, selling, assigning, or
6 otherwise transferring the right to collect payment for any product or service sold prior to the
7 entry of this Order.

8 **III. PROHIBITION AGAINST USING CUSTOMER INFORMATION**

9 **IT IS FURTHER ORDERED** that defendant Brett Callister and his officers, agents,
10 servants, employees, and attorneys, and all other persons in active concert or participation with
11 any of them who receive actual notice of this Order by personal service or otherwise, are
12 permanently restrained and enjoined from:

- 13 A. Disclosing, using, or benefitting from customer information, including the name,
14 address, telephone number, email address, social security number, other
15 identifying information, or any data that enables access to a customer's account
16 (including a credit card, bank account, or other financial account), of any person
17 which any defendant obtained in connection with the sale of any product or
18 service by defendant Jesse Willms or any of the corporate defendants prior to
19 entry of this Order; and
- 20 B. Failing to dispose of such customer information in all forms in his possession,
21 custody, or control within thirty (30) days after entry of this Order. Disposal shall
22 be by means that protect against unauthorized access to the customer information,
23 such as by burning, pulverizing, or shredding any papers, and by erasing or
24 destroying any electronic media, to ensure that the customer information cannot
25 practicably be read or reconstructed.

26 *Provided, however,* that customer information need not be disposed of, and may be disclosed, to
27 the extent requested by a government agency or required by a law, regulation, or court order.

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IV. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is entered in favor of the Commission and against defendant Brett Callister in the amount of \$18,000 as equitable monetary relief. This monetary judgment shall be suspended subject to the Subsections below;
- B. Unless he has already done so, defendant Brett Callister is required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), that shall be used for purposes of collecting and reporting on any delinquent amount arising out of defendant Brett Callister's relationship with the government;
- C. All money paid to the Commission under this Order shall be deposited into a fund administered by the Commission or its representatives to be used for equitable relief including consumer redress and any attendant expenses for the administration of any redress fund. If direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for any other equitable relief (including consumer information remedies) as it determines to be reasonably related to defendant Brett Callister's practices alleged in the Complaint. Any monies not used for such equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendant Brett Callister shall have no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection;
- D. Defendant Brett Callister relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant Brett Callister shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise;

1 E. Defendant Brett Callister agrees that the facts as alleged in the Complaint filed in
2 this action shall be taken as true without further proof in any bankruptcy case or
3 subsequent civil litigation pursued by the Commission to enforce its rights to any
4 payment or money judgment pursuant to this Order including, but not limited to, a
5 nondischargeability complaint in any bankruptcy case. Defendant Brett Callister
6 further stipulates and agrees that the facts alleged in the Complaint establish all
7 elements necessary to sustain an action by the Commission pursuant to Section
8 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this
9 Order shall have collateral estoppel effect for such purposes;

10 F. The Commission's agreement to this Order is expressly premised upon the
11 truthfulness, accuracy, and completeness of defendant Brett Callister's financial
12 condition as represented in the financial statements dated April 4, 2011, and
13 September 23, 2011, and supporting documents, which contain material
14 information upon which the Commission relied in negotiating and agreeing to the
15 terms of this Order. If, upon motion by the Commission, this Court finds that
16 defendant Brett Callister has failed to disclose any material asset, or materially
17 misrepresented the value of any asset, or made any other material
18 misrepresentation in, or omission from, the financial statements, then, as to
19 defendant Brett Callister, the full judgment against him, less amounts already paid
20 shall become immediately due, and interest computed pursuant to 28 U.S.C. §
21 1961, as amended, shall immediately begin to accrue on the unpaid balance.
22 **Provided, however,** that in all other respects, this Order shall remain in full force
23 and effect unless otherwise ordered by this Court; and

24 G. Proceedings instituted under this Section are in addition to, and not in lieu of, any
25 other civil or criminal remedies as may be provided by law, including any other
26 proceedings the Commission may initiate to enforce this Order.
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V. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that defendant Brett Callister make timely submissions to the Commission:

A. One hundred and eighty (180) days after entry of this Order, defendant Brett Callister must submit a compliance report, sworn under penalty of perjury:

1. He must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with him; (b) identify all of his businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other defendant (which defendant Brett Callister must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how defendant Brett Callister is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, defendant Brett Callister must: (1) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any businesses for which he performs services whether as an employee or otherwise and any entity in which he has any ownership interest; and (c) describe in detail his involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;

- 1 B. For twenty (20) years following entry of this Order, defendant Brett Callister
2 must submit a compliance notice, sworn under penalty of perjury, within fourteen
3 (14) days of change in the following:
- 4 1. Defendant Brett Callister must report any change in: (a) any designated
5 point of contact; (b) the structure of any entity that he has any ownership
6 interest in or directly or indirectly controls that may affect compliance
7 obligations arising under this Order, including: creation, merger, sale, or
8 dissolution of the entity or any subsidiary, parent, or affiliate that engages
9 in any acts or practices subject to this Order;
 - 10 2. Additionally, defendant Brett Callister must report any change in: (a)
11 name, including aliases or fictitious names, or residence address; or (b)
12 title or role in any business, including any business for which he performs
13 services whether as an employee or otherwise and any entity in which he
14 has an ownership interest, and identify its name, physical address, and
15 Internet address, if any;
- 16 C. Defendant Brett Callister must submit to the Commission notice of the filing of
17 any bankruptcy petition, insolvency proceeding, or any similar proceeding by or
18 against him within fourteen (14) days of its filing;
- 19 D. Any submission to the Commission required by this Order to be sworn to under
20 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
21 such as by concluding: "I declare under penalty of perjury under the laws of the
22 United States of America that the foregoing is true and correct. Executed on: ____"
23 and supplying the date, signatory's full name, title (if applicable), and signature;
24 and
- 25 E. Unless otherwise directed by a Commission representative in writing, all
26 submissions to the Commission pursuant to this Order must be emailed to
27 Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to:
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1 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
2 Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.
3 The subject line must begin: *FTC v. Jesse Willms, et al.* [X110031]

4 **VI. COMPLIANCE MONITORING**

5 **IT IS FURTHER ORDERED** that, for the purpose of monitoring defendant Brett
6 Callister's compliance with this Order:

- 7 A. Within fourteen (14) days of receipt of a written request from a representative of
8 the Commission, defendant Brett Callister must: submit additional compliance
9 reports or other requested information, which must be sworn under penalty of
10 perjury; appear for depositions; and produce documents for inspection and
11 copying. The Commission is also authorized to obtain discovery, without further
12 leave of court, using any of the procedures prescribed by Federal Rules of Civil
13 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69;
- 14 B. For matters concerning this Order, the Commission is authorized to communicate
15 directly with defendant Brett Callister. Defendant Brett Callister must permit
16 representatives of the Commission to interview any employee or other person
17 affiliated with him who has agreed to such an interview. The person interviewed
18 may have counsel present; and
- 19 C. The Commission may use all other lawful means, including posing through its
20 representatives, as consumers, suppliers, or other individuals or entities, to
21 defendant Brett Callister or any individual or entity affiliated with him, without
22 the necessity of identification or prior notice. Nothing in this Order limits the
23 Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of
24 the FTC Act, 15 U.S.C. §§ 49, 57b-1.

25 **VII. RECORD KEEPING**

26 **IT IS FURTHER ORDERED** that defendant Brett Callister must create certain records
27 for twenty (20) years after entry of this Order, and retain each such record for five (5) years.

1 Specifically, defendant Brett Callister, for any business in which he individually or collectively
2 with any other defendant, is a majority owner or directly or indirectly controls, must maintain the
3 following records:

- 4 A. Accounting records showing the revenues from all products or services sold, all
5 costs incurred in generating those revenues, and the resulting net profit or loss;
- 6 B. Personnel records showing for each person providing services, whether as an
7 employee or otherwise, that person's: name, address, and telephone numbers;
8 that person's job title or position; the dates of service; and if applicable, reason
9 for the person's termination;
- 10 C. Complaints and refund requests whether received directly or indirectly, as
11 through a third party, and any responses;
- 12 D. A copy of each advertisement or other marketing material; and
- 13 E. All records necessary to demonstrate full compliance with each provision of this
14 Order, including submissions to the Commission.

15 **VIII. ORDER ACKNOWLEDGMENTS**

16 **IT IS FURTHER ORDERED** that defendant Brett Callister obtain acknowledgments of
17 receipt of this Order:

- 18 A. Defendant Brett Callister, within seven (7) days of entry of this Order, must
19 submit to the Commission an acknowledgment of receipt of this Order sworn
20 under penalty of perjury;
- 21 B. For five (5) years after entry of this Order, defendant Brett Callister, for any
22 business that he, individually or collectively with any other defendant, is the
23 majority owner or directly or indirectly controls, must deliver a copy of this Order
24 to: (1) all principals, officers, directors, and managers; (2) all employees, agents,
25 and representatives who participate in conduct related to the subject matter of the
26 Order; and (3) any business entity resulting from any change in structure as set
27 forth in the Section titled "Compliance Reporting." Delivery must occur with
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1 seven (7) days of entry of this Order for current personnel. To all others, delivery
2 must occur before they assume their responsibilities; and

3 C. From each individual or entity to which defendant Brett Callister delivered a copy
4 of this Order, he must obtain, within thirty (30) days, a signed and dated
5 acknowledgment of receipt of this Order.

6 **IX. RETENTION OF JURISDICTION**


7 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for
8 purposes of construction, modification, and enforcement of this Order.

9 **SO ORDERED**, this ____ day of _____.

10
11
12 Honorable Marsha J. Pechman
United States District Judge

13 Presented by:

14 For Plaintiff


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16 
17 KATHRYN C. DECKER, WSBA #12389
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27 Attorneys for Plaintiff Federal Trade Commission

1 For Defendant Brett Callister

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28 Attorney for Defendant Brett Callister