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2 FEDERAL TRADE COMMISSION
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6 FEDERAL TRADE COMMISSION
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7 Los Angeles, CA 90024
8 Attorneys for Plaintiff

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

11 **FEDERAL TRADE COMMISSION,**

12
13 Plaintiff,

14
15 v.

16 NUTRACLICK, LLC, a limited
17 liability company, also d/b/a Force
18 Factor;

19 DANIEL WALLACE, individually and
20 as an officer of NutraClick, LLC; and

21 PATRICK CARROLL, individually
22 and as an officer of NutraClick, LLC;

23 Defendants.
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Case No. 2:20-cv-08612

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26 **STIPULATION TO**
27 **STIPULATED FINAL ORDER**
28 **FOR PERMANENT**
INJUNCTION AND OTHER
EQUITABLE RELIEF

26 Plaintiff, the Federal Trade Commission (“FTC”), filed its Complaint for
27 Permanent Injunction and Other Equitable Relief (“Complaint”), for a permanent
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1 injunction and other equitable relief in this matter, pursuant to Sections 5(a),
2 5(m)(1)(A), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15
3 U.S.C. §§ 45(a), 45(m)(1)(A), 56(a), 57b; Section 5 of the Restore Online
4 Shoppers’ Confidence Act (“ROSCA”), 15 U.S.C. § 8404; and the Telemarketing
5 and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C.
6 §§ 6101-6108.

7 Defendants have waived service of the summons and the complaint. The
8 Commission and Defendants hereby stipulate to the entry of a Stipulated Final
9 Order for Permanent Injunction and Other Equitable Relief (lodged concurrently)
10 to resolve all matters in dispute in this action between them. The terms of the
11 accompanying Proposed Order follow below.

12 **SO STIPULATED AND AGREED:**

13 **FOR PLAINTIFF:**

14 
15 _____
16

Date: 9/21/2020

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

20 **FOR DEFENDANTS:**

21 
22 _____

Date: 9-16-20

23 LEONARD L. GORDON, ESQ.
24 ELLEN TRAUPTMAN BERGE, ESQ.
25 Venable LLP
26 Attorneys for Defendant NutraClick, LLC
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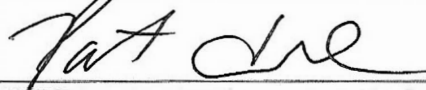
1 **DEFENDANTS DANIEL WALLACE AND NUTRACLICK, LLC**

2 

Date: 9/16/2020

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

5 **DEFENDANT PATRICK CARROLL:**

6 

Date: 9/16/2020

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

9 **TERMS OF THE PROPOSED ORDER**

10 **FINDINGS**

- 11 1. This Court has jurisdiction over this matter.
- 12 2. The Complaint charges that Defendants violated Section 4 of ROSCA, 15
13 U.S.C. § 8403, and the Telemarketing Sales Rule (“TSR”), 16 C.F.R.
14 § 310.3(a)(1)(vii), by charging consumers for products sold both on the internet
15 and by phone through a Negative Option Feature without first clearly and
16 conspicuously disclosing that consumers were required to call Defendant
17 NutraClick, LLC one day prior to the end of consumers’ “free trial” to prevent
18 recurring charges.
- 19 3. Defendants neither admit nor deny any of the allegations in the Complaint,
20 except as specifically stated in this Order. Only for purposes of this action,
21 Defendants admit the facts necessary to establish jurisdiction.
- 22 4. Defendants waive any claim that they may have under the Equal Access to
23 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through
24 the date of this Order, and agree to bear their own costs and attorney fees.
- 25 5. Defendants waive all rights to appeal or otherwise challenge or contest the
26 validity of this Order.
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1 **DEFINITIONS**

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

3 A. **“Corporate Defendant”** means NutraClick, LLC and its successors and
4 assigns.

5 B. **“Defendants”** means Corporate Defendant and both Individual
6 Defendants, individually, collectively, or in any combination.

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

8 D. **“Negative Option Feature”** means, in an offer or agreement to sell or
9 provide any good or service, a provision under which the consumer’s silence or
10 failure to take affirmative action to reject a good or service or to cancel the
11 agreement is interpreted by the seller or provider as acceptance or continuing
12 acceptance of the offer.

13 E. **“2016 Order”** means the Order for Permanent Injunction and Monetary
14 Judgment in *FTC v. NutraClick, LLC*, No. 16-cv-6819-DMG (JPRx), entered on
15 September 20, 2016.

16 **ORDER**

17 **I. BAN ON NEGATIVE OPTION FEATURES**

18 IT IS THEREFORE ORDERED that Defendants, whether acting directly
19 or through an intermediary, are permanently restrained and enjoined from
20 promoting or offering for sale any good or service with a Negative Option
21 Feature.
22

23 **II. PROHIBITION AGAINST MISREPRESENTATIONS**

24 IT IS FURTHER ORDERED that Defendants, their officers, agents,
25 employees, and attorneys, and all other persons in active concert or participation
26 with any of them, who receive actual notice of this Order, whether acting directly
27 or indirectly, in connection with promoting or offering for sale any good or
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1 service, are permanently restrained and enjoined from misrepresenting or
2 assisting others in misrepresenting, expressly or by implication:

3 A. The date on which a consumer will be charged for, or shipped, a good or
4 service;

5 B. Any material aspect of the nature or terms of a refund, cancellation,
6 exchange, or repurchase policy for the good or service; or

7 C. Any other material fact.

8
9 **III. 2016 ORDER SUPERSEDED IN PART**

10 IT IS FURTHER ORDERED that this Order supersedes the 2016 Order,
11 except as to the Findings and Sections V-VII thereof (“Prohibitions on Violating
12 the Restore Online Shoppers’ Confidence Act,” “Monetary Judgment,” and
13 “Additional Monetary Provisions”).

14 **IV. ORDER ACKNOWLEDGMENTS**

15 IT IS FURTHER ORDERED that Defendants obtain acknowledgments of
16 receipt of this Order:

17 A. Each Defendant, within 7 days of entry of this Order, must submit to the
18 Commission an acknowledgment of receipt of this Order sworn under penalty of
19 perjury.

20 B. For 5 years after entry of this Order, each Individual Defendant for any
21 business that such Defendant, individually or collectively with any other
22 Defendants, is the majority owner or controls directly or indirectly, and the
23 Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
24 officers, directors, and LLC managers and members; (2) all employees having
25 managerial responsibilities for conduct related to the subject matter of this Order
26 and all agents and representatives who participate in conduct related to the subject
27 matter of this Order; and (3) any business entity resulting from any change in
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1 structure as set forth in the Section titled Compliance Reporting. Delivery must
2 occur within 7 days of entry of this Order for current personnel. For all others,
3 delivery must occur before they assume their responsibilities.

4 C. From each individual or entity to which a Defendant delivered a copy of
5 this Order, that Defendant must obtain, within 30 days, a signed and dated
6 acknowledgment of receipt of this Order.

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8 **V. COMPLIANCE REPORTING**

9 IT IS FURTHER ORDERED that Defendants make timely submissions to
10 the Commission:

11 A. One year after entry of this Order, each Defendant must submit a
12 compliance report, sworn under penalty of perjury:

- 13 1. Each Defendant must: (a) identify the primary physical, postal, and
14 email address and telephone number, as designated points of contact,
15 which representatives of the Commission may use to communicate
16 with Defendant; (b) identify all of that Defendant's businesses by all
17 of their names, telephone numbers, and physical, postal, email, and
18 internet addresses; (c) describe the activities of each business,
19 including the goods and services offered, the means of advertising,
20 marketing, and sales, and the involvement of any other Defendant
21 (which Individual Defendant must describe if they know or should
22 know due to their own involvement); (d) describe in detail whether
23 and how that Defendant is in compliance with each Section of this
24 Order; and (e) provide a copy of each Order Acknowledgment
25 obtained pursuant to this Order, unless previously submitted to the
26 Commission.

- 1 2. Additionally, each Individual Defendant must: (a) identify all
2 telephone numbers and all physical, postal, email and internet
3 addresses, including all residences; (b) identify all business
4 activities, including any business for which such Defendant performs
5 services whether as an employee or otherwise and any entity in
6 which such Defendant has any ownership interest; and (c) describe in
7 detail such Defendant's involvement in each such business,
8 including title, role, responsibilities, participation, authority, control,
9 and any ownership.

10 B. For 15 years after entry of this Order, each Defendant must submit a
11 compliance notice, sworn under penalty of perjury, within 14 days of any change
12 in the following:

- 13 1. Each Defendant must report any change in: (a) any designated point
14 of contact; or (b) the structure of any Corporate Defendant or any
15 entity that Defendant has any ownership interest in or controls
16 directly or indirectly that may affect compliance obligations arising
17 under this Order, including: creation, merger, sale, or dissolution of
18 the entity or any subsidiary, parent, or affiliate that engages in any
19 acts or practices subject to this Order.
20 2. Additionally, each Individual Defendant must report any change in:
21 (a) name, including aliases or fictitious name, or residence address;
22 or (b) title or role in any business activity, including any business for
23 which such Defendant performs services whether as an employee or
24 otherwise and any entity in which such Defendant has any ownership
25 interest, and identify the name, physical address, and any internet
26 address of the business or entity.
27

1 C. Each Defendant must submit to the Commission notice of the filing of any
2 bankruptcy petition, insolvency proceeding, or similar proceeding by or against
3 such Defendant within 14 days of its filing.

4 D. Any submission to the Commission required by this Order to be sworn
5 under penalty of perjury must be true and accurate and comply with 28 U.S.C. §
6 1746, such as by concluding: “I declare under penalty of perjury under the laws
7 of the United States of America that the foregoing is true and correct. Executed
8 on: _____” and supplying the date, signatory’s full name, title (if applicable), and
9 signature.

10 E. Unless otherwise directed by a Commission representative in writing, all
11 submissions to the Commission pursuant to this Order must be emailed to
12 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
13 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
14 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
15 subject line must begin: *FTC v. NutraClick, LLC, X160052*.

17 VI. RECORDKEEPING

18 IT IS FURTHER ORDERED that Defendant must create certain records
19 for 15 years after entry of the Order, and retain each such record for 5 years.
20 Specifically, Defendant must create and retain the following records:

21 A. accounting records showing the revenues from all goods or services sold;

22 B. personnel records showing, for each person providing services, whether as
23 an employee or otherwise, that person’s: name; addresses; telephone numbers;
24 job title or position; dates of service; and (if applicable) the reason for
25 termination;

26 C. records of all consumer complaints and refund requests, whether received
27 directly or indirectly, such as through a third party, and any response, all of which
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1 must be retrievable by date and by the consumer's name, telephone number, or
2 billing information;

3 D. all records necessary to demonstrate full compliance with each provision of
4 this Order, including all submissions to the Commission; and

5 E. a copy of each unique advertisement or other marketing material.

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7 **VII. COMPLIANCE MONITORING**

8 IT IS FURTHER ORDERED that, for the purpose of monitoring
9 Defendants' compliance with this Order, including any failure to transfer any
10 assets as required by this Order:

11 A. Within 14 days of receipt of a written request from a representative of the
12 Commission, each Defendant must: submit additional compliance reports or
13 other requested information, which must be sworn under penalty of perjury;
14 appear for depositions; and produce documents for inspection and copying. The
15 Commission is also authorized to obtain discovery, without further leave of court,
16 using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30
17 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

18 B. For matters concerning this Order, the Commission is authorized to
19 communicate directly with each Defendant. Defendants must permit
20 representatives of the Commission to interview any employee or other person
21 affiliated with any Defendant who has agreed to such an interview. The person
22 interviewed may have counsel present.

23 C. The Commission may use all other lawful means, including posing,
24 through its representatives as consumers, suppliers, or other individuals or
25 entities, to Defendant or any individual or entity affiliated with Defendant,
26 without the necessity of identification or prior notice. Nothing in this Order
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1 limits the Commission’s lawful use of compulsory process, pursuant to Sections 9
2 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

3 D. Upon written request from a representative of the Commission, any
4 consumer reporting agency must furnish consumer reports concerning Individual
5 Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15
6 U.S.C. § 1681b(a)(1).

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8 **VIII. RETENTION OF JURISDICTION**

9 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
10 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 FINAL ORDER FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF 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 Defendants NutraClick, LLC; Daniel Wallace; and Patrick Carroll



Brian M. Welke