

FAYE CHEN BARNOUW, CA Bar No. 168631  
MARICELA SEGURA, CA Bar No. 225999  
[fbarnouw@ftc.gov](mailto:fbarnouw@ftc.gov); [msegura@ftc.gov](mailto:msegura@ftc.gov)  
Federal Trade Commission  
10990 Wilshire Blvd., Ste. 400  
Los Angeles, CA 90024  
Tel: (310) 824-4300  
Fax: (310) 824-4380

Attorneys for the Plaintiff  
Federal Trade Commission

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,  
  
Plaintiff,  
  
v.  
  
MDK MEDIA INC., et al.,  
  
Defendants.

Case No. 2:14-cv-05099-JFW-MRWx  
  
[PROPOSED] STIPULATED  
ORDER FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF AGAINST  
DEFENDANTS DARCY MICHAEL  
WEDD AND PHWOAR, LLC

Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its First Amended Complaint for Permanent Injunction and Other Equitable Relief for a permanent injunction, and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). In order to resolve all matters in dispute in this action between them, the Commission and Defendants Darcy Michael Wedd and Phwoar, LLC (“Settling Defendants”) have stipulated to resolve the pending litigation by entry of this Stipulated Order for Permanent Injunction and Other Equitable Relief (“Order”) with the terms set forth below.

THEREFORE, IT IS ORDERED as follows:

1 **FINDINGS**

2 1. This Court has jurisdiction over this matter.

3 2. The First Amended Complaint charges that Defendants participated in  
4 deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15  
5 U.S.C. § 45, in a scheme to place unauthorized charges on consumers’ mobile  
6 telephone bills, a practice known as “cramming.”

7 3. Settling Defendants neither admit nor deny any of the allegations in  
8 the First Amended Complaint, except as specifically stated in this Order. Only for  
9 purposes of this action, Settling Defendants admit the facts necessary to establish  
10 jurisdiction.

11 4. Settling Defendants waive and release any claims that they may have  
12 against Plaintiff, the Commission, and their agents that relate to this action.  
13 Settling Defendants waive any claim that they may have under the Equal Access to  
14 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through  
15 the date of this Order, and agree to bear their own costs and attorney fees.

16 5. Settling Defendants waive all rights to appeal or otherwise challenge  
17 or contest the validity of this Order.

18 **DEFINITIONS**

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

20 A. **“Settling Defendants”** means the Individual Settling Defendant and  
21 the Corporate Settling Defendant, individually, collectively, or in any combination.

22 1. **“Corporate Settling Defendant”** means Phwoar, LLC, and its  
23 dba’s, successors, and assigns.

24 2. **“Individual Defendant”** means Darcy Michael Wedd.

25 B. **“Person”** means any individual, group, unincorporated association,  
26 limited general partnership, corporation, or other business entity.

1 **ORDER**

2 **I. BAN ON PLACING CHARGES ON TELEPHONE BILLS**

3 IT IS HEREBY ORDERED that Settling Defendants are permanently  
4 restrained and enjoined from billing, submitting for billing, or assisting or  
5 facilitating the billing or submitting for billing, charges to any telephone bill,  
6 including but not limited to a bill for any voice, text, or data service.

7 **II. PROHIBITION AGAINST MISREPRESENTATIONS**

8 IT IS FURTHER ORDERED that, in connection with the advertising,  
9 marketing, promotion, offering for sale, sale, or distribution of any product or  
10 service, Settling Defendants, Settling Defendants' officers, agents, employees, and  
11 attorneys, and all other persons in active concert or participation with any of them,  
12 who receive actual notice of this Order, whether acting directly or indirectly, are  
13 permanently restrained and enjoined from making, or assisting others in making,  
14 expressly or by implication, any false or misleading representation, including  
15 representations concerning the cost, performance, efficacy, nature, characteristics,  
16 benefits, or safety of any product or service, or concerning any consumer's  
17 obligation to pay for charges for any product or service.

18 **III. PROHIBITION AGAINST UNFAIR BILLING PRACTICES**

19 IT IS FURTHER ORDERED that, in connection with the advertising,  
20 marketing, promotion, offering for sale, sale, or distribution of any product or  
21 service, Settling Defendants, Settling Defendants' officers, agents, employees, and  
22 attorneys, and all other persons in active concert or participation with any of them,  
23 who receive actual notice of this Order, whether acting directly or indirectly, are  
24 permanently restrained and enjoined from causing any consumer to be billed for  
25 any product or service without having previously obtained the consumer's express  
26 informed consent, and having created and maintained a record of such consent.

27 **IV. CUSTOMER INFORMATION**

28 IT IS FURTHER ORDERED that Settling Defendants, Settling Defendants'

1 officers, agents, employees, and attorneys, and all other persons in active concert  
2 or participation with any of them, who receive actual notice of this Order, whether  
3 acting directly or indirectly, are permanently restrained and enjoined from directly  
4 or indirectly:

5 A. disclosing, using, or benefitting from customer information, including  
6 the name, address, telephone number, email address, social security number, other  
7 identifying information, or any data that enables access to a customer's account  
8 (including a credit card, bank account, telephone billing account, or other financial  
9 account), that any Settling Defendant obtained prior to entry of this Order in  
10 connection with the placement of charges on consumers' mobile telephone bills;  
11 and

12 B. failing to destroy such customer information in all forms in their  
13 possession, custody, or control within 30 days after receipt of written direction to  
14 do so from a representative of the Commission.

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

## 18 V. COOPERATION

19 IT IS FURTHER ORDERED that Settling Defendants must fully cooperate  
20 with representatives of the Commission in this case and in any investigation or  
21 litigation related to or associated with the transactions or the occurrences that are  
22 the subject of the First Amended Complaint. Such Settling Defendants must  
23 provide truthful and complete information, evidence, and testimony. Such  
24 Individual Settling Defendant must appear and such Corporate Settling Defendant  
25 must cause Corporate Settling Defendant's officers, employees, representatives, or  
26 agents to appear for interviews, discovery, hearings, trials, and any other  
27 proceedings that a Commission representative may reasonably request upon 5 days  
28 written notice, or other reasonable notice, at such places and times as a

1 Commission representative may designate, without the service of a subpoena.

2 **VI. ORDER ACKNOWLEDGMENTS**

3 IT IS FURTHER ORDERED that Settling Defendants obtain  
4 acknowledgments of receipt of this Order:

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

8 B. For 3 years after entry of this Order, each Individual Settling  
9 Defendant for any business involved with placing charges on phone bills that such  
10 Defendant, individually or collectively with any other Defendants, is the majority  
11 owner or controls directly or indirectly, and each Corporate Settling Defendant,  
12 must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC  
13 managers and members; (2) all employees having managerial responsibilities for  
14 the placement of charges on phone bills and all agents and representatives who  
15 participate in the placement of charges on phone bills; and (3) any business entity  
16 resulting from any change in structure as set forth in the Section titled Compliance  
17 Reporting. Delivery must occur within 7 days of entry of this Order for current  
18 personnel. For all others, delivery must occur before they assume their  
19 responsibilities.

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

23 **VII. COMPLIANCE REPORTING**

24 IT IS FURTHER ORDERED that Settling Defendants make timely  
25 submissions to the Commission:

26 A. One year after entry of this Order, each Settling Defendant must  
27 submit a compliance report, sworn under penalty of perjury:  
28

1           1. Each Settling Defendant must: (a) identify the primary  
2 physical, postal, and email address and telephone number, as designated points of  
3 contact, which representatives of the Commission may use to communicate with  
4 that Defendant; (b) identify all of that Defendant's businesses by all of their names,  
5 telephone numbers, and physical, postal, email, and Internet addresses; (c) describe  
6 the activities of each business, including the goods and services offered, the means  
7 of advertising, marketing, and sales, and the involvement of any other Defendant  
8 (which Individual Settling Defendant must describe if he knows or should know  
9 due to his own involvement); (d) describe in detail whether and how that  
10 Defendant is in compliance with each Section of this Order; and (e) provide a copy  
11 of each Order Acknowledgment obtained pursuant to this Order, unless previously  
12 submitted to the Commission.

13           2. Additionally, Individual Settling Defendant must: (a) identify  
14 all telephone numbers and all physical, postal, email and Internet addresses,  
15 including all residences; (b) identify all business activities, including any business  
16 for which such Defendant performs services whether as an employee or otherwise  
17 and any entity in which such Defendant has any ownership interest; and (c)  
18 describe in detail such Defendant's involvement in each such business, including  
19 title, role, responsibilities, participation, authority, control, and any ownership.

20           B. For 3 years after entry of this Order, each Settling Defendant must  
21 submit a compliance notice, sworn under penalty of perjury, within 14 days of any  
22 change in the following:

23           1. Each Settling Defendant must report any change in: (a) any  
24 designated point of contact; or (b) the structure of any Corporate Settling  
25 Defendant or any entity that any Settling Defendant has any ownership interest in  
26 or controls directly or indirectly that may affect compliance obligations arising  
27 under this Order, including: creation, merger, sale, or dissolution of the entity or  
28

1 any subsidiary, parent, or affiliate that engages in any acts or practices subject to  
2 this Order.

3 2. Additionally, each Individual Settling Defendant must report  
4 any change in: (a) name, including aliases or fictitious name, or residence address;  
5 or (b) title or role in any business activity, including any business for which such  
6 Defendant performs services whether as an employee or otherwise and any entity  
7 in which such Defendant has any ownership interest, and identify the name,  
8 physical address, and any Internet address of the business or entity.

9 C. Each Settling Defendant must submit to the Commission notice of the  
10 filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by  
11 or against such Defendant within 14 days of its filing.

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

18 E. Unless otherwise directed by a Commission representative in writing,  
19 all submissions to the Commission pursuant to this Order must be emailed to  
20 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:  
21 Associate Director for Enforcement, Bureau of Consumer Protection, Federal  
22 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The  
23 subject line must begin: FTC v. Darcy Michael Wedd, et al., X140034.

## 24 **VIII. RECORDKEEPING**

25 IT IS FURTHER ORDERED that Settling Defendants must create certain  
26 records for 3 years after entry of the Order, and retain each such record for 2 years.  
27 Specifically, Corporate Settling Defendant and Individual Settling Defendant for  
28 any business that such Defendant, individually or collectively with any other

1 Defendants, is a majority owner or controls directly or indirectly, must create and  
2 retain the following records:

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

5 B. personnel records showing, for each person providing services,  
6 whether as an employee or otherwise, that person's: name; addresses; telephone  
7 numbers; job title or position; dates of service; and (if applicable) the reason for  
8 termination;

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

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

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

#### 14 **IX. COMPLIANCE MONITORING**

15 IT IS FURTHER ORDERED that, for the purpose of monitoring Settling  
16 Defendants' compliance with this Order:

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

24 B. For matters concerning this Order, the Commission is authorized to  
25 communicate directly with each Settling Defendant. Settling Defendant must  
26 permit representatives of the Commission to interview any employee or other  
27 person affiliated with any Settling Defendant who has agreed to such an interview.  
28 The person interviewed may have counsel present.



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

7 D. Upon written request from a representative of the Commission, any  
8 consumer reporting agency must furnish consumer reports concerning Individual  
9 Settling Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15  
10 U.S.C. §1681b(a)(1)

11 **X. RETENTION OF JURISDICTION**

12 IT IS FURTHER ORDERED that this Court retains jurisdiction of this  
13 matter for purposes of construction, modification, and enforcement of this Order.

14 **IT IS SO ORDERED.**

15 Dated: \_\_\_\_\_

16 \_\_\_\_\_  
17 Hon. John F. Walter  
18 United States District Judge