

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 14-60166-Civ-SCOLA/OTAZO-REYES

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ACQUINITY INTERACTIVE, LLC, *et al.*,

Defendants.

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**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF AS TO  
DEFENDANTS BURTON KATZ AND JONATHAN SMYTH**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”), for a permanent injunction and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108. The Commission and Defendants Burton Katz and Jonathan Smyth (“Stipulating Defendants”) stipulate to entry of this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Defendants Burton Katz and Jonathan Smyth (“Order”) to resolve all matters in dispute in this action between them.

**NOW THEREFORE**, Plaintiff and Stipulating Defendants, having requested the Court to enter this Order, and the Court having considered the Order reached between the parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

### **FINDINGS**

1. The Court has jurisdiction over this matter.
2. The Complaint charges that Stipulating Defendants have participated in deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by placing unauthorized charges on consumers' mobile phone bills.
3. Stipulating Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Stipulating Defendants admit the facts necessary to establish jurisdiction.
4. Stipulating Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney's fees.
5. Stipulating Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

### **DEFINITIONS**

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

1. "Person" or "persons" includes a natural person, an organization or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.
2. "Plaintiff" means the Federal Trade Commission ("FTC" or "Commission").
3. "Stipulating Defendants" means Burton Katz and Jonathan Smyth, individually and collectively.

**I.**

**BAN ON PLACING CHARGES ON TELEPHONE BILLS**

**IT IS ORDERED** that Stipulating Defendants are permanently restraining and enjoined from billing, submitting for billing, or assisting or facilitating the billing or submitting for billing, charges to any telephone bill, including but not limited to a bill for any voice, text, or data service.

**II.**

**INJUNCTION AGAINST MISREPRESENTATIONS**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any product or service, Stipulating Defendants, Stipulating Defendants' officers, agents, servants, and employees, 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, are permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, any false or misleading material representation, including representations concerning the cost, performance, efficacy, nature, characteristics, benefits, or safety of any product or service, or concerning any consumer's obligation to pay for charges for any product or service.

**III.**

**EXPRESS INFORMED CONSENT**

**IT IS FURTHER ORDERED** that, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any product or service, Stipulating Defendants, Stipulating Defendants' officers, agents, servants, and employees, 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, are permanently restrained and enjoined from causing any consumer to be billed for any product or service without having previously obtained the consumer's express informed consent, and having created and maintained a record of such consent.

#### IV.

#### MONETARY JUDGMENT

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of Seven Hundred and Four Thousand, Two Hundred and Forty-Four Dollars (\$704,244) is entered in favor of the Commission against Defendant Burton Katz as equitable monetary relief.

B. Katz is ordered to pay to the Commission Seven Hundred and Four Thousand, Two Hundred and Forty-Four Dollars (\$704,244). Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

C. Judgment in the amount of Seven Hundred and Four Thousand, Two Hundred and Forty-Four Dollars (\$704,244) is entered in favor of the Commission against Defendant Jonathan Smyth as equitable monetary relief.

D. Smyth is ordered to pay to the Commission Seven Hundred and Four Thousand, Two Hundred and Forty-Four Dollars (\$704,244). Such payment must be made within 7 days of entry of this Order by electronic fund transfer in accordance with instructions previously provided by a representative of the Commission.

E. On or before September 8, 2014, Stipulating Defendants shall turn over to their undersigned counsel a total of Seven Hundred and Four Thousand, Two Hundred and Forty-Four Dollars (\$704,244), which their undersigned counsel will hold in escrow for the sole purpose of partially satisfying the Judgment. Undersigned counsel for Stipulating Defendants shall promptly notify counsel for the FTC of receipt of said amount, and the identity of the account where the funds are maintained.

F. Stipulating Defendants relinquish dominion and all legal and equitable rights, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

G. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

H. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

I. Stipulating Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Stipulating Defendants must submit to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

J. 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

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