

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 CAREY L. MILNE

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 Carey L. Milne 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 Carey L. Milne, 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 Carey
6 L. Milne under Section 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

7 5. Defendant Carey L. Milne filed a petition for relief under Chapter 13 of the Bankruptcy
8 Code on October 24, 2011. The Commission’s prosecution of this action, including the
9 entry of a money judgment and the enforcement of a judgment other than a money
10 judgment obtained in this action, are actions to enforce the Commission’s police or
11 regulatory powers. As a result, if the bankruptcy case is pending as of the date of entry
12 of this Order, then these actions are excepted from the automatic stay pursuant to 11
13 U.S.C. § 362(b)(4).

14 6. Plaintiff and defendant Carey L. Milne waive all rights to appeal or otherwise challenge
15 or contest the validity of this Order.

16 7. Defendant Carey L. Milne waives any claim that she may hold under the Equal Access to
17 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date
18 of this Order, and agrees to bear her own costs and attorneys fees.

19 **DEFINITIONS**

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

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

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

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

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

23 5. **“Marketing Affiliate”** means any person or entity with whom defendants are in direct
24 privity who participates with defendants in marketing any product or service.

25 6. **“Product or service”** includes merchandise, goods, plans, and programs.
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ORDER

I. MISREPRESENTATIONS TO THIRD PARTIES

IT IS FURTHER ORDERED that, in connection with procuring services from third parties including, but not limited to, affiliate networks, payment processors, banks or other financial institutions, marketing affiliates, customer service providers, lead brokers, web designers, and fulfillment houses, defendant Carey L. Milne and her officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are permanently restrained and enjoined from:

- A. Making, or assisting others in making, directly or indirectly, expressly or by implication, any false or misleading material representation including, but not limited to, misrepresentations about:
 - 1. The control or affiliation between any person or entity seeking to procure services and any other person or entity;
 - 2. The nature, terms, conditions, and disclosures associated with the advertising, marketing, promoting, offering for sale, or sale of any product or service offered by defendants; and
 - 3. Third party approvals or endorsements, or the substantiation for or the legality of advertising claims for any product or service offered for sale by defendants;
- B. Failing to disclose to any payment processor or financial institution the following information: (1) the identity of the owner, manager, director, or officer of the applicant for or holder of a merchant account, and (2) any material connection between the owner, manager, director, or officer of the applicant for or holder of a merchant account and any third party who has been or is placed in a merchant account monitoring program, has had a merchant account terminated by a payment processor or a financial institution, or has been fined or otherwise

1 disciplined in connection with a merchant account by a payment processor or a
2 financial institution; and

- 3 C. Engaging in any practice that would have the effect of circumventing any
4 chargeback monitoring program or other risk management program implemented
5 by a credit card payment association.

6 **II. PROHIBITION ON COLLECTING PAST ACCOUNTS**

7 **IT IS FURTHER ORDERED** that defendant Carey L. Milne and her officers, agents,
8 servants, employees, and attorneys, and all other persons in active concert or participation with
9 any of them who receive actual notice of this Order by personal service or otherwise, are
10 permanently restrained and enjoined from attempting to collect, collecting, selling, assigning, or
11 otherwise transferring the right to collect payment for any product or service sold prior to the
12 entry of this Order.

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

14 **IT IS FURTHER ORDERED** that defendant Carey L. Milne and her officers, agents,
15 servants, employees, and attorneys, and all other persons in active concert or participation with
16 any of them who receive actual notice of this Order by personal service or otherwise, are
17 permanently restrained and enjoined from:

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

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

6 **IV. MONETARY JUDGMENT**

7 **IT IS FURTHER ORDERED** that:

- 8 A. Judgment is entered in favor of the Commission and against defendant Carey L.
9 Milne in the amount of \$32,000 as equitable monetary relief. This monetary
10 judgment shall be suspended subject to the Subsections below;
- 11 B. Unless she has already done so, defendant Carey L. Milne is required, in
12 accordance with 31 U.S.C. § 7701, to furnish to the Commission her Taxpayer
13 Identification Numbers (Social Security Numbers or Employer Identification
14 Numbers), that shall be used for purposes of collecting and reporting on any
15 delinquent amount arising out of defendant Carey L. Milne's relationship with the
16 government;
- 17 C. All money paid to the Commission under this Order shall be deposited into a fund
18 administered by the Commission or its representatives to be used for equitable
19 relief including consumer redress and any attendant expenses for the
20 administration of any redress fund. If direct redress to consumers is wholly or
21 partially impracticable or money remains after redress is completed, the
22 Commission may apply any remaining money for any other equitable relief
23 (including consumer information remedies) as it determines to be reasonably
24 related to defendant Carey L. Milne's practices alleged in the Complaint. Any
25 monies not used for such equitable relief shall be deposited to the U.S. Treasury
26 as disgorgement. Defendant Carey L. Milne shall have no right to challenge any
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1 actions the Commission or its representatives may take pursuant to this
2 Subsection;

3 D. Defendant Carey L. Milne relinquishes all dominion, control, and title to the
4 funds paid to the fullest extent permitted by law. Defendant Carey L. Milne shall
5 make no claim to or demand for return of the funds, directly or indirectly, through
6 counsel or otherwise;

7 E. Defendant Carey L. Milne agrees: (1) that the judgment ordered by Subsection A
8 of this Section is not dischargeable in her bankruptcy case; (2) to the concurrent
9 filing by the Commission in her bankruptcy case, upon entry of this Order, of a
10 Complaint to Determine Nondischargeability of Debt Owed to the Federal Trade
11 Commission in the form attached as Attachment A, and a Stipulated Judgment for
12 Nondischargeability of Debt Owed to the Federal Trade Commission in the form
13 attached as Attachment B, which she has executed concurrently with her
14 execution of this Order; and (3) that she will not object to the allowance of a
15 general unsecured claim in her bankruptcy case in favor of the FTC in the amount
16 of \$32,000;

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

- 4 G. Proceedings instituted under this Section are in addition to, and not in lieu of, any
5 other civil or criminal remedies as may be provided by law, including any other
6 proceedings the Commission may initiate to enforce this Order.

7 **V. COMPLIANCE REPORTING**

8 **IT IS FURTHER ORDERED** that defendant Carey L. Milne make timely submissions
9 to the Commission:

- 10 A. One hundred and eighty (180) days after entry of this Order, defendant Carey L.
11 Milne must submit a compliance report, sworn under penalty of perjury:

- 12 1. She must: (a) designate at least one telephone number and an email,
13 physical, and postal address as points of contact, which representatives of
14 the Commission may use to communicate with her; (b) identify all of her
15 businesses by all of their names, telephone numbers, and physical, postal,
16 email, and Internet addresses; (c) describe the activities of each business,
17 including the products and services offered, the means of advertising,
18 marketing, and sales, and the involvement of any other defendant (which
19 defendant Carey L. Milne must describe if she knows or should know due
20 to her own involvement); (d) describe in detail whether and how defendant
21 Carey L. Milne is in compliance with each Section of this Order; and (e)
22 provide a copy of each Order Acknowledgment obtained pursuant to this
23 Order, unless previously submitted to the Commission;
- 24 2. Additionally, defendant Carey L. Milne must: (1) identify all telephone
25 numbers and all email, Internet, physical, and postal addresses, including
26 all residences; (b) identify all titles and roles in all business activities,
27 including any businesses for which she performs services whether as an
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1 employee or otherwise and any entity in which she has any ownership
2 interest; and (c) describe in detail her involvement in each such business,
3 including title, role, responsibilities, participation, authority, control, and
4 any ownership;

5 B. For twenty (20) years following entry of this Order, defendant Carey L. Milne
6 must submit a compliance notice, sworn under penalty of perjury, within fourteen
7 (14) days of change in the following:

8 1. Defendant Carey L. Milne must report any change in: (a) any designated
9 point of contact; (b) the structure of any entity that she has any ownership
10 interest in or directly or indirectly controls that may affect compliance
11 obligations arising under this Order, including: creation, merger, sale, or
12 dissolution of the entity or any subsidiary, parent, or affiliate that engages
13 in any acts or practices subject to this Order;

14 2. Additionally, defendant Carey L. Milne must report any change in: (a)
15 name, including aliases or fictitious names, or residence address; or (b)
16 title or role in any, including any business for which she performs services
17 whether as an employee or otherwise and any entity in which she has an
18 ownership interest, and identify its name, physical address, and Internet
19 address, if any;

20 C. Defendant Carey L. Milne must submit to the Commission notice of the filing of
21 any bankruptcy petition, insolvency proceeding, or any similar proceeding by or
22 against her within fourteen (14) days of its filing;

23 D. Any submission to the Commission required by this Order to be sworn to under
24 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
25 such as by concluding: "I declare under penalty of perjury under the laws of the
26 United States of America that the foregoing is true and correct. Executed on: ____"

1 and supplying the date, signatory's full name, title (if applicable), and signature;
2 and

- 3 E. Unless otherwise directed by a Commission representative in writing, all
4 submissions to the Commission pursuant to this Order must be emailed to
5 Debrief@ftc.gov or sent by overnight courier (not U.S. Postal Service) to:
6 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
7 Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.
8 The subject line must begin: *FTC v. Jesse Willms, et al.* [X110031]

9 **VI. COMPLIANCE MONITORING**

10 **IT IS FURTHER ORDERED** that, for the purpose of monitoring defendant Carey L.
11 Milne's compliance with this Order, including the financial representations upon which the
12 judgment was suspended:

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

4 **VII. RECORD KEEPING**

5 **IT IS FURTHER ORDERED** that defendant Carey L. Milne must create certain records
6 for twenty (20) years after entry of this Order, and retain each such record for five (5) years.
7 Specifically, defendant Carey L. Milne, for any business in which she, individually or
8 collectively with any other defendant, is a majority owner or directly or indirectly controls, must
9 maintain the following records:

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

21 **VIII. ORDER ACKNOWLEDGMENTS**

22 **IT IS FURTHER ORDERED** that defendant Carey L. Milne obtain acknowledgments
23 of receipt of this Order:

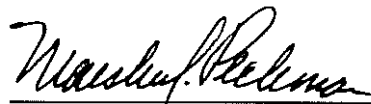
- 24 A. Defendant Carey L. Milne, within seven (7) days of entry of this Order, must
25 submit to the Commission an acknowledgment of receipt of this Order sworn
26 under penalty of perjury;

- 1 B. For five (5) years after entry of this Order, defendant Carey L. Milne, for any
2 business that she, individually or collectively with any other defendant, is the
3 majority owner or directly or indirectly controls, must deliver a copy of this Order
4 to: (1) all principals, officers, directors, and managers; (2) all employees, agents,
5 and representatives who participate in conduct related to the subject matter of the
6 Order; and (3) any business entity resulting from any change in structure as set
7 forth in the Section titled "Compliance Reporting." Delivery must occur with
8 seven (7) days of entry of this Order for current personnel. To all others, delivery
9 must occur before they assume their responsibilities; and
- 10 C. From each individual or entity to which defendant Carey L. Milne delivered a
11 copy of this Order, she must obtain, within thirty (30) days, a signed and dated
12 acknowledgment of receipt of this Order.

13 **IX. RETENTION OF JURISDICTION**


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

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17 **SO ORDERED**, this 6th day of March, 2012.

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21 Marsha J. Pechman
22 United States District Judge
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2 Presented by:

3 For Plaintiff

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5 ~~KATHRYN C. DECKER, WSBA #12389~~
6 NADINE SAMTER, WSBA #23881
7 ELEANOR DURHAM
8 JULIE K. MAYER, WSBA #34638
9 RICHARD MCKEWEN
10 Federal Trade Commission
11 915 Second Ave., Suite 2896
12 Seattle, WA 98174
13 206-220-4486 (Decker)
14 206-220-4479 (Samter)
206-220-4476 (Durham)
206-220-4475 (Mayer)
206-220-4595 (McKewen)
206-220-6366 (fax)
kdecker@ftc.gov
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15 Attorneys for Plaintiff Federal Trade Commission
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1 For Defendant Carey L. Milne

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3 Carey L. Milne

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12 Attorney for Defendant Carey L. Milne

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	ADV. PROC. NO. _____
CAREY L. MILNE,)	
)	
Defendant.)	
)	
IN RE:)	CASE NO. 11-35367
)	
THOMAS MILNE & CAREY L. MILNE,)	CHAPTER 13
)	
Joint Debtors.)	
)	

COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF DEBT

Plaintiff Federal Trade Commission ("FTC" or "Commission") brings this adversary proceeding pursuant to 11 U.S.C. § 523(a)(2)(A) and (c), seeking an order determining that a judgment obtained by the FTC against Defendant Carey L. Milne ("Defendant Milne") is excepted from discharge.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

2. Venue in the District of Utah is proper under 28 U.S.C. § 1409(a).

3. This Adversary Proceeding relates to *In re Thomas Milne & Carey L. Milne*, Case No. 11-35367 (Chapter 13), now pending in this Court. The Commission is a creditor with a general unsecured claim against Defendant Milne pursuant to a Stipulated Judgment and Order (“District Court Judgment”) entered against her in the United States District Court for the Western District of Washington at Seattle (“District Court”) on _____, 201_, in the case styled *FTC v. Jesse Wilms, et al.*, Case No. 2:11-cv-828-MJP (“Enforcement Action”).

4. The District Court Judgment includes a monetary judgment in favor of the Commission and against Defendant Milne in the principal amount of \$32,000. District Court Judgment Section IV.A. Based upon financial statements and supporting documents provided by Defendant Milne to the Commission, the District Court conditionally suspended this judgment. The judgment may be reinstated by the District Court in accordance with Sections IV.A and IV.G of the District Court Judgment.

PLAINTIFF

5. Plaintiff Federal Trade Commission is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

6. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

DEFENDANT

7. Defendant Carey L. Milne ("Milne"), a resident of Utah, is an officer of Net Soft Media, LLC, one of her co-defendants in the Enforcement Action. At all times material to this Complaint, acting alone or in concert with others, she has formulated, directed, controlled, had authority to control, or participated in the acts and practices of Net Soft Media set forth in this Complaint. Milne has contracted with Willms (as defined below) and the Enforcement Action corporate defendants to provide an array of services including, but not limited to, establishing bank accounts for Willms, setting up companies for the purpose of obtaining banking merchant processing services for Willms, and participating in the management of said companies. In connection with the matters alleged herein, Milne transacts or has transacted business in this district and throughout the United States.

CO-DEFENDANTS IN UNDERLYING ENFORCEMENT ACTION

Defendant's Enforcement Action co-defendants are:

8. Jesse Willms ("Willms") owns, directs, or otherwise controls each of the Enforcement Action corporate defendants (Willms and all of the Enforcement Action corporate defendants are collectively referred to herein as the "Willms defendants"). Willms uses or has used each of the corporate defendants to operate his international enterprise marketing products,

programs, and services over the Internet. By and through the corporate defendants, he has harmed U.S. and foreign consumers with his unfair and deceptive business practices. At all times material to this Complaint, acting alone or in concert with Defendant and others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. Among other things, Willms has created and/or approved the business plans and marketing materials used by the corporate defendants, and negotiated and signed contracts on behalf of the corporate defendants, including contracts for banking and payment processing services.

9. **Net Soft Media, LLC**, is a Utah limited liability corporation. Net Soft Media has done business as **SwipeBids.com**. Willms controls Net Soft Media pursuant to an agreement entered into between Willms and Defendant Milne. Under that agreement, Defendant Milne established Net Soft Media to facilitate the operation of penny auctions, including those featured on **SwipeBids.com**, and to secure banking and merchant processing services for Willms. Net Soft Media transacts or has transacted business in this district and throughout the United States.

10. **Peter Graver** is an officer of defendant **JDW Media, LLC**, is the registered agent for defendant **Sphere Media, LLC**, and has served as a signatory on **Sphere Media** bank accounts. At all times material to this Complaint, acting alone or in concert with Defendant Milne and others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of **JDW Media** and **Sphere Media** set forth in this Complaint. Graver has contracted with Willms and the Enforcement Action corporate defendants to provide an array of services including, but not limited to, establishing bank

accounts for Willms, setting up companies for the purpose of obtaining banking and merchant processing services for Willms, and participating in the management of said companies.

11. **Adam Sechrist** ("Sechrist") is a director and sole shareholder of defendant Circle Media Bids Limited and manager of defendant Sphere Media, LLC. At all times material to this Complaint, acting alone or in concert with Defendant Milne and others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of Circle Media Bids and Sphere Media set forth in this Complaint. Sechrist has contracted with Willms and the Enforcement Action corporate defendants to provide an array of services including, but not limited to, establishing bank accounts for Willms, setting up companies for the purpose of obtaining banking merchant processing services for Willms, and participating in the management of said companies.

12. **Brett Callister** ("Callister") is an officer of defendant True Net, LLC. At all times material to this Complaint, acting alone or in concert with Defendant Milne and others, he has formulated, directed, controlled, had authority to control, or participated in the acts and practices of True Net set forth in this Complaint. Callister has contracted with Willms and the Enforcement Action corporate defendants to provide an array of services including, but not limited to, establishing bank accounts for Willms, setting up companies for the purpose of obtaining banking merchant processing services for Willms, and participating in the management of said companies.

13. **Elizabeth Graver** is an officer of defendant Mobile Web Media, LLC. At all times material to this Complaint, acting alone or in concert with others, she has formulated,

directed, controlled, had authority to control, or participated in the acts and practices of Mobile Web Media set forth in this Complaint. Elizabeth Graver has contracted with Willms and the Enforcement Action corporate defendants to provide an array of services including, but not limited to, establishing bank accounts for Willms, setting up companies for the purpose of obtaining banking and merchant processing services for Willms, and participating in the management of said companies.

14. **1021018 Alberta Ltd** is a Canadian limited liability company. Willms is the sole owner of this defendant. Its registered trade names are Just Think Media, Credit Report America, Wulongsource, and Wuyi Source (collectively "Just Think Media").

15. **1016363 Alberta Ltd** is a Canadian limited liability company. Willms is the sole owner of this defendant. Its registered trade name is eDirect Software.

16. **1524948 Alberta Ltd** is a Canadian limited liability company. Defendant Willms is the sole owner of this defendant. Its registered trade name is Terra Marketing Group; Terra Marketing Group had done business under various names, including as SwipeBids.com and SwipeAuctions.com.

17. **Circle Media Bids Limited** is a private limited company incorporated in England. Circle Media Bids has done business under various names, including SwipeBids.com, SwipeAuctions.com, and Selloffauctions.com. Willms controls Circle Media Bids pursuant to an agreement entered into between Willms and Sechrist. Under that agreement, Sechrist established Circle Media Bids to facilitate the operation of "penny auctions," described below,

including those featured on SwipeBids.com, SwipeAuctions.com, and Selloffauctions.com, and to secure banking and merchant processing services for Willms.

18. **Coastwest Holdings Limited** is a Cyprus corporation. Willms is the sole owner of Coastwest Holdings, which Willms established to facilitate his Internet operations, as well as to secure offshore merchant banking services.

19. **Farend Services Ltd** is a Cyprus corporation. Willms controls Farend Services, and has signed as "President" on a Cease and Desist entered into by Farend Services with the State of Utah. Farend Services was established to facilitate Willms's Internet operations, as well as to secure offshore merchant banking services for Willms.

20. **JDW Media, LLC**, is an Idaho limited liability corporation. Willms controls JDW Media pursuant to an agreement entered into between Willms and Peter Graver. Under that agreement, Peter Graver established JDW Media to facilitate Willms's Internet operations and to secure banking and merchant processing services for Willms.

21. **Sphere Media, LLC**, is a Utah limited liability corporation. Sphere Media has done business under various names, including as SwipeBids.com and SwipeAuctions.com. Willms controls Sphere Media pursuant to an agreement entered into between Willms and Sechrjst. Under that agreement, Sechrjst established Sphere Media to facilitate the operation of penny auctions, including those featured on SwipeBids.com and SwipeAuctions.com, and to secure banking and merchant processing services for Willms.

22. **True Net, LLC**, is a Nevada limited liability corporation. True Net has done business as Selloffauctions.com. Willms controls True Net pursuant to an agreement entered

into between Willms and Callister. Under that agreement, Callister established True Net to facilitate the operation of penny auctions, including those featured on Selloffauctions.com, and to secure banking and merchant processing services for Willms.

23. **Mobile Web Media, LLC**, is a Utah limited liability corporation. Willms controls Mobile Web Media pursuant to an agreement entered into between Willms and Elizabeth Graver. Under that agreement, Elizabeth Graver established Mobile Web Media to facilitate Willms's Internet operations and to secure banking and merchant processing services for Willms.

**DEFENDANT'S AND HER ENFORCEMENT ACTION CO-DEFENDANTS'
BUSINESS PRACTICES**

Introduction

24. Using deceptive marketing tactics for a variety of products, programs, and services offered via the Internet, the Willms defendants have made charges to consumers' credit and debit cards that the consumers neither knew about nor agreed to. Since at least 2007, the Willms defendants' illegal practices have raked in more than \$467 million from consumers in the U.S., Canada, the U.K., Australia, and New Zealand.

25. The Willms defendants contract with a network of third parties known as "affiliate marketers" to direct consumers to the Willms defendants' websites. The affiliate marketers use a variety of e-commerce advertising techniques, including banner ads, pop-ups, sponsored search terms, and unsolicited email to drive consumer traffic to "landing pages" (the Willms defendants' websites) for the Willms defendants' offers. The Willms defendants provide their affiliate marketers with creative content describing the offers for the affiliate marketers to

use in their advertising. Some affiliate marketers also create their own advertising. The Willms defendants pay the affiliate marketers for each consumer who, originating from the affiliate marketer's advertisement, lands on one of the Willms defendants' websites, enters his or her credit or debit card information, and is successfully charged by the Willms defendants.

26. Regardless of the specific product, program, or service offered – which has varied widely, from teeth whiteners and quick weight loss products to work-at-home schemes and penny auctions – the Willms defendants induce consumers to enter their credit or debit card information by making false claims about the nature of the offer, including the total cost to the consumer, recurring monthly charges that the Willms defendants make to the consumer's account, and the availability of refunds.

27. The Willms defendants also fail to disclose, or they disclose inadequately, the actual terms and conditions governing the offer. Information critical to consumers' decision to provide credit or debit card account information is displayed in small fonts, using pale colors that are difficult to view. This information appears before or after long paragraphs and graphics in places widely separated from the box where consumers are asked to enter billing information, or appears on a separate "terms and conditions" or "terms of use" page, the information hidden in lengthy and dense prose that is difficult to understand. Other features, such as streaming video, graphics, differing colors and font sizes, and false claims about the limited availability of the offer further distract consumers' attention away from important disclosures about cost, recurring charges, or refund limitations.

28. Through these means, the Willms defendants have charged consumers for undisclosed membership or access fees, and for additional unwanted products, programs, or services bundled in with the initial offer from which consumers could not opt-out (called “forced upsells” in the industry). The Willms defendants have also made recurring monthly charges to consumers’ accounts to which consumers had not agreed, often for continued access to programs or services that consumers did not know they were purchasing (called “continuity plans” in the industry).

29. In addition to their deceptive billing practices, in connection with weight loss and colon cleansing products offered by the Willms defendants from 2007 through February 2010, the Willms defendants made false and unsubstantiated representations that the products caused rapid, effortless weight loss or could help prevent colon cancer. To lend credibility to these assertions, the Willms defendants also falsely claimed that the products had been endorsed or recommended by celebrities.

30. The Enforcement Action defendants obtain and retain merchant bank accounts through which charges to consumers’ VISA and MasterCard accounts can be processed. The Willms defendants’ deceptive sales practices, however, have generated a high rate of chargebacks (consumer efforts to cancel or reverse charges to their credit card accounts), which has caused the credit card chargeback monitoring system used by merchant banks to flag the Enforcement Action defendants’ merchant accounts as problematic. Merchants, like the Enforcement Action defendants, with flagged accounts must either lower their chargeback rates or be expelled from the credit card processing system.

31. Defendant Milne and the Willms defendants, rather than change their business practices and reduce chargebacks, have provided merchant banks with inaccurate information and manipulated sales data to create artificially low chargeback rates. By these tactics, the Defendant Milne and the Enforcement Action defendants have been able to continue to process undisclosed, unwanted, and unauthorized charges to consumers' accounts, causing significant and widespread consumer injury.

Evading Risk Management Rules to Obtain Merchant Accounts

32. In numerous instances, Defendant Milne and the Willms defendants, as well as her other Enforcement Action co-defendants Peter Graver, Seclust, Callister, Milne, and Elizabeth Graver, have submitted inaccurate information to financial institutions and manipulated sales data reported to the credit card processing system in order to obtain and retain access to merchant processing accounts through which consumers' credit and debit cards may be charged.

33. Merchants (like the Willms defendants) that want to accept credit cards for sales transactions contract with financial institutions called "merchant banks." Merchant banks have various underwriting criteria that a merchant must meet in order to establish a merchant account with the bank. Because merchant banks want to avoid losses associated with consumer reversals of credit card transactions (known as chargebacks), in many instances, these underwriting criteria require that the terms and conditions of a sale are clearly and prominently disclosed to the consumer before the consumer authorizes a credit card payment.

34. On numerous occasions, the Willms defendants have been advised by merchant banks or others involved in arranging for payment processing that their websites did not adequately disclose to consumers the costs and terms of their offers. Rather than curing these deceptions, the Willms defendants have created “dummy” or inactive web sites that were used only to show merchant banks their purported marketing materials. The Willms defendants then directed consumers to different websites that do not include compliant language.

35. In addition to meeting underwriting requirements with respect to the offer, in most instances, the merchant bank also requires that the merchant be in good standing with the credit card associations. In large part, this means that the merchant has a chargeback or reversal rate that is acceptable to Visa and MasterCard.

36. Both Visa and MasterCard have risk management divisions that monitor merchant chargeback rates. A merchant’s chargeback rate is calculated as a ratio or percentage. The numerator is the number of transactions passing through the credit card system in a particular month that are charged back to the merchant bank by the consumer or by the consumer’s bank. The denominator is the total number of transactions processed by that merchant through the credit card system in the preceding month. The permissible chargeback ratio for Visa is 1%; the permissible chargeback ratio for MasterCard is .5%. Credit card associations deem chargeback rates exceeding these rates as an indication of a problem involving the merchant, including unauthorized charges to a cardholder’s account or deceptive business practices. For much of the time that the Willms defendants marketed products using a trial offer enticement, their chargeback rates far exceeded the chargeback ceilings set by Visa and MasterCard. During

some periods, the Willms defendants chargeback rates for some products were as high as 10% to 20%.

37. Merchants with impermissible chargeback rates are required to reduce their rates to an acceptable level. If they do not, or cannot, the merchant bank will terminate the merchant. (VISA and MasterCard assess penalties on merchant banks that tolerate merchants with ongoing high chargeback rates.) When a merchant bank terminates a merchant, the merchant is placed on a list of terminated merchants (called the MATCH list) made available to other merchant banks. Once on this list, the merchant may no longer be able to secure a merchant account.

38. Shortly after they began accepting credit card payments, the Willms defendants' chargeback rates exceeded the allowable ratios, and they were terminated by one or more merchant banks and placed on the MATCH list. In response, the Willms defendants created shell corporations in the names of Defendant Milne and her co-defendants Peter Graver, Sechrist, Callister, and Elizabeth Graver, but which really belonged to the Willms defendants. Defendant Milne and her co-defendants then applied for merchant accounts using the shell corporations they had created. Thus, the new merchant accounts could not be easily traced to the Willms defendants.

39. Defendant Milne participated in this deceptive scheme by, among other things, serving as a nominee officer of Net Soft Media, and signing applications for bank accounts and merchant processing applications for Net Soft Media. Her co-defendants Peter Graver, Sechrist, Callister, and Elizabeth Graver also participated in this scheme by, among other things, serving as nominees for JDW Media, Sphere Media, Circle Media Bids, True Net, and Mobile Web

Media, and signing applications for bank accounts and merchant processing applications for these entities.

40. In addition, the Willms defendants have manipulated the manner in which payment data has been submitted to the system. For example, they have structured their sales to assess cardholder accounts for multiple charges of varying prices to artificially increase the volume of sales and thereby lower the ratio of chargebacks to sales; frequently changed the billing descriptors for their products and used multiple merchant descriptors for their products to obscure the actual chargeback rate associated with their products; and engaged in “load balancing,” which involves balancing sales across multiple descriptors and through multiple merchant accounts to artificially decrease their chargeback rate. The Willms defendants have also processed payments outside the United States where some banks allow very high chargeback rates and have frequently opened new merchant accounts and used numerous merchant accounts at the same time.

41. By submitting inaccurate information to merchant banks and manipulating payment data, Defendant Milne and the Willms defendants were able to continue to accept credit card payments from consumers for unauthorized charges far longer than they would have otherwise been able to, causing substantial consumer injury.

The Willms Defendants' Offers

42. The Willms defendants' offered products, programs, and services have changed over time. From August 2007 through February 2010, the Willms defendants offered purported risk-free trials of teeth whiteners, acai berry weight loss products, colon cleansers, and health

supplements containing resveratrol, the supposedly healthful ingredient in red wine. The Willms defendants also offered purported risk-free trials of a work-at-home scheme, access to government grants, and free credit reports.

43. The Willms defendants changed the product names and associated website landing pages frequently. Sometimes just the landing pages would change, and formatting of graphics, pictures, disclosures, or the product claims would differ. Other times, the Willms defendants would change the name of the product itself (even though the ingredients did not vary) so that a particular affiliate marketer could have an “exclusive” offer, or the product could be marketed as new, enhanced, or target a different market.

44. The Willms defendants have offered weight loss products under many names including, but not limited to, Wuyi Bum, Wuyi Tea, Wuyi Source, Easy Weight Loss Tea, AcaiBurn, AcaiBurn Max, Ultra AcaiBurn, AcaiBurn Plus, AcaiEdge Max, Detox AcaiBurn, Max AcaiBurn, Extreme AcaiBurn, Maximum AcaiBurn, Premium AcaiBurn, and AcaiSlim Detox (collectively referred to as “AcaiBurn Products”). The Willms defendants’ colon cleansing products include, but are not limited to, PureCleanse, PureCleanse Detox, PureCleanse Ultra, Ultimate PureCleanse, Nature PureCleanse, and PureCleanse Max (collectively referred to as “PureCleanse products”). The Willms defendants’ resveratrol products include, but are not limited to, PureResV, ResvEdge, ResvElite, ResvSupreme, and Pureresver.

45. The Willms defendants’ teeth whitening products include, but are not limited to, DazzleWhite, DazzleWhiteNow, DazzleWhitePure, DazzleWhiteSupreme, DazzleSmileNow,

DazzleSmilePro, DazzleSmilePure, DazzleSmileSupreme, DazzleWhitePro, PremiumWhitePro, PremiumWhiteSource, PremiumWhiteUltra, and VibrantSmileKit.

46. Other products offered by the Willms defendants included a work-at-home scheme marketed under the names OnlineCashSuccessKit, QuickProfitKit, and QuickProfitKitPro; a government grants program, marketed as SuccessGrants; and a free credit report program called CreditReportAmerica.

47. During this period, the Willms defendants also charged consumers for various forced upsells, including programs called Insider Secrets Expert Tips package, Comprehensive Weight Loss ebook, World Club Fitness, Fraud Protection, and ID Theft.

48. Since at least March 2010, the Willms defendants also have marketed penny auctions through web sites called SwipeBids.com, SwipeAuctions.com, and Selloffauctions.com (collectively referred to as "SwipeBids.com"). Penny auctions offer consumers the opportunity to bid on a variety of goods, including electronic devices, retailer gift cards, and even automobiles, for a fraction of their market value. Before a consumer can participate in a penny auction, the consumer must purchase bids that typically cost between fifty cents to one dollar. Thus, regardless of whether a consumer ultimately wins or loses a penny auction, the consumer has paid for each bid the consumer places during the auction. In a penny auction, every time a bid is placed on an offered item, the cost of the item increases by a fixed amount, and the auction deadline is extended by a short period of time. The winning bidder must pay the final bidding price on the item, plus shipping and handling charges.

49. Since at least January 2011, the Willms defendants also have marketed online consumer research services through various websites including, but not limited to, publicrecords1.com and cellphonenumberlookup.com. The websites highlight different search topics, such as ancestry records, cell phone numbers, criminal history records, and other searches, but are similarly set up and perform the same basic search function.

Misrepresentations About “Free.” “Risk-free” “Bonus,” and “\$1.00”

50. Regardless of the offer, the Willms defendants induce consumers to provide their credit or debit card account information by falsely promising that the product, program, or service can be had on a “free” or “risk-free” trial basis for which consumers pay only a nominal shipping and handling fee. In some instances, the Willms defendants have represented that the product, program, or service is a “bonus” that consumers receive simply by signing up.

51. In connection with their trial offers marketed prior to February 2010, the Willms defendants routinely represented that the offers were “free” or “risk-free.” For example, the following and other similar representations appeared on pages of the Willms defendants’ websites for each of their offers:

- a. “Your risk-free trial is almost ready to ship. Simply use this 100% secure order form to tell us how to bill the small cost to ship you your trial. Oh and don’t worry, today you are only being charged for the small shipping charge, and nothing more.”
- b. “GET YOUR RISK-FREE BOTTLE TODAY!”

- c. "Let me allow you to evaluate the results before you pay a cent. The only thing I ask is that you cover the small cost to ship it straight to your door."
- d. "We let you try it, before you buy it!"
- e. "If you order Resveratrol Edge with Acai today you can have a free trial bottle and only pay for the shipping and handling."
- f. "**CLICK HERE TO TRY IT FOR FREE!** *Just pay shipping!*"

52. Further highlighting that consumers' total monetary outlay was only the nominal shipping and handling fee, many order pages included a summary of ordering information. Consumers viewing such a summary had no reason to believe that they would be charged for the trial product or the additional bonus products beyond the listed shipping and handling fee.

53. In connection with their penny auction offers, the Willms defendants have routinely represented that consumers would receive "bonus" bids when registering on their websites. For example, the following and other similar representations appeared on pages of the Willms defendants' penny auction websites:

- a. "What You Get: 300 Bonus Bids, Just for Signing Up." and
- b. "**CONGRATULATIONS! AS A BONUS YOU WILL RECEIVE 50 BIDS EACH MONTH. CLICK CONTINUE TO START BIDDING NOW.**"

54. In connection with the Willms defendants' consumer research service websites, the Willms defendants routinely have represented that their trial offers cost \$1.00. The following are representative of claims that appeared on pages of the Willms defendants' consumer research service websites:

- a. "\$1 Special Price today with database trial."
- b. "Due to the nature of this valuable and sensitive information , there is a \$1.00 processing fee for one report. Other companies offer you free reports, because they are only using public records. We charge you because we provide real results."
- c. "Why does it cost \$1.00 For My Report and 5 Day Trial?" and
- d. "For Limited Time, We are offering Your Report for \$1. Please Continue to Ensure You Get Your Report."

55. These representations were followed by a prominent red button stating "SHOW ME THE REPORT." Clicking this button transferred the consumer to the order page where the consumer input payment information. Right below the order form another prominent red button stated, "GET FULL REPORT NOW!" Pressing this button submitted the consumer's payment information.

56. In fact, the Willms defendants' trial offers and "bonus bids" were not free, risk-free, or bonuses. Consumers who provided the Willms defendants their credit or debit card information to cover the costs of shipping and handling or to facilitate future purchases of auction items were charged for products, programs, and services that they did not know about and had not agreed to purchase. For example, in connection with the Willms defendants "risk-free" trial offers, some consumers were charged for a full month's supply of the relevant product trial sample (typically \$79.95) and were assessed a similar recurring monthly charge, while other consumers were charged a "membership" fee for access to products at a reduced cost for a year.

Consumers also were charged monthly recurring fees for the so-called “bonus” products. Cancelling these charges, or obtaining refunds, involved separate time-consuming phone calls and other steps that made the process far from “risk-free.”

57. In connection with the Willms defendants’ penny auction sites, the Willms defendants’ “bonus” bids were not bonuses at all, but rather, in connection with signing up, consumers were charged for the 300 introductory bonus bids, typically \$150. The monthly bonus bids were not free either, and consumers were charged \$11.95 each month to receive that “bonus.”

58. In connection with the Willms defendants’ consumer research service sites, the Willms defendants’ \$1 trial offer did not cost only \$1, but rather, in connection with signing up to purchase a report, consumers were charged \$18.95 to \$19.95 each month to receive the right to order additional consumer research reports.

Undisclosed Charges

59. The Willms defendants’ representations about “free,” “risk-free,” and “bonus” products, programs, or services caused consumers to believe that they would not be charged for additional amounts after providing their billing information. The Willms defendants failed to disclose, or to disclose adequately, critical information about the additional charges associated with these offers.

Initial Charges

60. In connection with some of the Willms defendants’ trial offers, the Willms defendants failed to adequately disclose that consumers who did not affirmatively cancel within

a specified trial period would automatically be enrolled in a one-year membership program for which the Willms defendants charged consumers an up-front, non-refundable fee, often \$126. The Willms defendants placed the non-refundable fee disclosure in various places on ordering pages, but never in close proximity to the box where consumers entered their credit or debit card information, in a font size and color comparable to those used for displaying other information (including the numerous references to “free” and “risk-free” trials), or otherwise in a manner that was clear and conspicuous and understandable. In addition, the charge for the non-refundable fee was mentioned in the separate “terms and conditions” page associated with each offer. In numerous instances, however, that “terms and conditions” page was not accessible from the ordering page where consumers input their account information because there was no hyperlink to it. Especially because the web pages repeatedly proclaimed that the trial offer was free or risk-free, and that the only cost to the consumer was a nominal shipping and handling fee, consumers had no reason to search out fine print disclosures or scrutinize dense “terms and conditions” pages looking for information about additional charges or onerous cancellation and refund policies. The Willms defendants never required consumers to click on or otherwise indicate that they had read, understood, or agreed to those terms and conditions. Consumers who did locate the page and tried to review it were confronted with a page packed with lengthy, legalistic fine print that typically did not mention a membership fee until they had scrolled half-way through the page.

61. In other instances in connection with the Willms defendants’ trial offers, the Willms defendants failed to adequately disclose that consumers who did not affirmatively cancel

within a specified trial period – by following the Willms defendants’ onerous and poorly disclosed rules about cancellations – would automatically be charged for the trial product or service. The initial charges for the Willms defendants’ trial products, programs, and services ranged from \$40 to \$90, depending on the product and the offer. Like the offers where the Willms defendants failed to adequately disclose the annual \$126 membership fee, although the placement of the disclosures about the charges varied, the disclosures were not displayed clearly and conspicuously in a place or manner where consumers likely would read and understand them prior to entering their payment information (or any other time). Disclosures about charges to consumers on the terms and conditions pages associated with these offers were similarly obscure. As discussed above, consumers usually could not access the terms and conditions page from the page where they entered payment information, and were not required to affirm that they agreed to or understood the terms associated with their purchase.

62. In connection with the Willms defendants’ penny auctions, the Willms defendants typically have failed to disclose adequately that consumers who entered their payment information would be immediately charged a one-year membership fee, often \$150 or \$159. Consumers’ payment information was requested in a box titled “Where Do We Send Your Winning Auctions,” which consumers associated with paying for auction items won, or shipping and handling charges, not with a membership fee. A separate box of information, titled “Membership Details” listed “Item: 1-Year Membership; You Pay: 50 cents/bid” and underneath the “1-Year Membership” stated “(Includes 300 Bids).” Underneath, a “You’re Guaranteed to Win” box promises consumers that if they “do not win a single auction using the 300 start-up

bids included, we will fully refund your bids.” Consumers did not understand from this that they would be charged in connection with entering their payment information and joining Swipebids.com. The terms of use page associated with this offer – which consumers typically are not required to accept or agree to prior to joining – obliquely mentions the membership charge in a section detailing the process for exchanges and refunds, but nowhere does it affirmatively state that consumers who provide their credit or debit card information will be charged a membership fee.

Monthly Recurring Charges

63. In connection with some offers, consumers who failed to cancel their trial offer within a specific trial period were automatically enrolled in a monthly continuity plan and were charged each month for recurring shipments of the product or continued access to the program or service until the consumer cancelled. Consumers were not adequately told about these recurring charges at the time they provided their payment information and were not provided a way to avoid them. (This form of billing is sometimes known as a negative option continuity program.) At no point during the ordering process were consumers required to affirmatively agree to these ongoing charges.

64. In addition to the monthly recurring charges for the advertised product, most consumers who provided their credit or debit card information were also charged monthly recurring charges for two additional products that they did not order or even want. These upsells were typically digital products (websites to which consumers were provided password access). As discussed above, these purported upsells were often referred to as “bonuses” or otherwise

listed as special items that the consumer was receiving for free. For example, on one AcaiBurn website, the Insider Secrets Experts Tips package and Comprehensive Weight Loss ebook were described as “Today’s Special #1 and #2 Included in Your Trial!” Without expecting to be charged for these items, consumers had no reason to look for disclosures about these monthly recurring fees. The Willms defendants’ ordering pages typically provided information about the monthly charges for upsells, but in fonts smaller than most others used on the page, in places neither obvious nor unavoidable to consumers prior to consumers’ entry of their account information, and often buried in boxes with other fine print information. The charges were also disclosed – in dense, fine print, in the middle of lengthy jargon-filled text – in the “Terms and Conditions” page, but that page was not typically accessible from the ordering page where consumers entered their account information. The Willms defendants did not adequately disclose these recurring charges to consumers at the time they provided their payment information. Consumers had no way to avoid these charges. At no point during the ordering process were consumers required to affirmatively agree to these ongoing charges.

65. In connection with their penny auction offers, the Willms defendants have also charged consumers a monthly recurring fee. This fee, typically \$11.95, is not disclosed at all prior to the consumer’s entry of payment information. As discussed above, because consumers think that they are providing their account information so that they may be charged in the future for any bids bought or items shipped, consumers have no expectation that their account will be charged any amount, much less on a recurring basis. After consumers enter payment information, a screen welcomes them to the auction site and in extra-large font tells consumers

that as a “bonus” they will receive 50 bids per month. In micro-print at the top of that screen is the first mention of the monthly charge, and a box is provided that consumers may check to purportedly avoid the charge. (Even this box is a red herring, because clicking on it does not, in fact, provide consumers a way to cancel the recurring monthly charge.) Because many consumers believe that the 50 bonus bids are free and do not expect to be charged for them, they do not look for this information or for ways to avoid such charges. At no point during the ordering process are consumers required to affirmatively agree to the ongoing charges.

66. In connection with their \$1.00 trial consumer research service offers, the Willms defendants have also charged consumers a monthly recurring fee. This fee, either \$18.95 or \$19.95, is not mentioned until the consumer reaches the order page and there it appears in a much smaller and lighter colored font than the balance of the text and under the heading “Secure Payment.” The disclosure is overwhelmed by the representation on the prior web page that the search costs just \$1.00 and by the prominent red button that is the focus of the page and that urges the consumer to click to get their full report now. There are no check boxes the consumer must check confirming that they understand that they are agreeing to be charged \$18.95 or \$19.95 on a monthly basis. These disclosures are not sufficient to overcome the net impression that the search costs only \$1.

Deceptive Refund Policies

67. The Willms defendants have routinely represented that they make full refunds to consumers who are dissatisfied with their products, programs, or services. Sometimes the refund process is even described as “easy.”

68. For example, in connection with the Willms defendants' trial product offers, the following and other similar statements appeared on the Willms defendants' websites:

- a. "We are so confident that AcaiBurn is the most effective and powerful anti-oxidant cleansing product on the market that if you do not find AcaiBurn right for you we will gladly give you a full refund, no questions asked. You have nothing to lose except the weight."
- b. "Our products are also backed by a risk-free guarantee."
- c. "TRUE SATISFACTION GUARANTEE. Should you decide to purchase PureCleanse Pro after trying our trial sample bottle, we will back up your order with our 100% satisfaction guarantee."
- d. "Now Every Order Is Fully Covered By Our Iron clad 60-day Money-back Guarantee."

69. In connection with the Willms defendants' penny auctions, the following and other similar statements appeared on the Willms defendants' websites:

- a. "Easy Money Back Guarantee . . . Just Follow The 3 Easy Steps"
- b. "Although, most penny auction sites do not offer refunds to their customers, we are so confident that you will win an auction with us that we created our easy Money Back Guarantee; this means that if you are not completely satisfied with Swipebids.com, and have not won any auction items, we will refund the price of your original membership bid pack purchase back to you, no questions asked!"

70. In numerous instances, the Willms defendants have not provided the promised full refunds to consumers. Often, the Willms defendants' customer service agents have simply denied the availability of refunds. Sometimes the Willms defendants have promised refunds, but never actually issued them.

71. In addition, in numerous instances, the process to obtain a refund, whether for one of the Willms defendants' trial products, a monthly recurring charge, a forced upsell, or a penny auction membership fee, is not "iron-clad," "easy," or "no questions asked." As further discussed below, the Willms defendants often impose onerous, undisclosed conditions and limitations on issuing refunds. In some instances, consumers only receive refunds after they complain to law enforcement or the Better Business Bureau. Even in those instances, the Willms defendants frequently have only issued partial refunds.

Undisclosed Limitations on Cancellations and Refunds

72. Although the Willms defendants made prominent representations about "Satisfaction Guaranteed," "money back guarantee," and "risk-free," the Willms defendants failed to inform consumers about important limitations on consumers' abilities to cancel future charges and obtain refunds for past payments.

73. In connection with their trial offers, the Willms defendants failed to adequately inform consumers that in order to cancel the trial and avoid charges for the advertised product, consumers were required to cancel and return the "free trial" product, and the Willms defendants had to receive the returned "free trial" product, before the expiration of the trial period. For offers with tangible products, the trial period was typically 14 days from the date of purchase of

the product, but for offers with digital products, such as the work at home products, consumers had as short a period as 24 hours to cancel. Moreover, for tangible products, the Willms defendants required consumers to bear the costs of returning the trial sample, including postage, insurance, and delivery confirmation. The Willms defendants accepted returns only if the consumer first obtained a cancellation number and a separate identification number from customer service prior to shipping the return package. Consumers who did not successfully cancel within the proscribed period were charged the full price of the product, which was not refundable. If the next month's shipment had already left the warehouse, consumers had to return that, too, or be charged (and if they waited to return multiple products at one time, they were only eligible for a refund on the most recent shipment). Future recurring charges for the advertised product would be cancelled, but no money would be refunded. Some of these requirements were explained in the "terms and conditions" page associated with each offer, but the disclosures were neither obvious nor avoidable.

74. In connection with the Willms defendants' forced upsells, the Willms defendants failed to disclose that consumers wishing to cancel had to call a separate toll free number *for each upsell* (meaning that to escape all charges associated with the Willms defendants' "risk-free" offer consumers needed to make three separate telephone calls). Moreover, the Willms defendants failed to disclose that each upsell had a different "trial" period in which cancellations were allowed. Consumers who failed to cancel within that trial window, typically 14 or 21 days, would be charged the monthly recurring fee for each upsell product, a charge that was not refundable. The short trial periods for the upsells were particularly pernicious because most

consumers did not know they were being charged for these products until they received their monthly account statements and saw the charges which by that time were not refundable. Even then, some consumers did not notice the charges because, in numerous instances, the Willms defendants intentionally charged odd amounts (e.g., \$3.24 or \$7.35), more reflective of a single purchase than a recurring charge. The Willms defendants did not provide refunds for any but the most recent charges to consumers' accounts.

75. In connection with the recurring monthly charge for the Willms defendants' penny auction offers, despite providing (in micro-print) a link to click for cancellation information, the Willms defendants failed to disclose how to cancel the recurring monthly charge. Consumers who did click to cancel were routed through an array of pages not one of which allowed cancellation of the charge.

76. In connection with the recurring monthly charge for the Willms defendants' consumer research service offers, some of the sites have stated that in order to cancel, the consumer must call the number on his or her credit card statement. Because the trial period only lasts five or seven days, many consumers who wish to cancel would not be able to do so before the expiration of the trial period. Further, when the consumer has attempted to cancel within the trial period via the "live chat" option provided on some websites, the cancellation process requires several steps that must take place over at least two days, and was not designed to ensure that consumers who want to cancel during the trial period can easily do so.

False and Unsubstantiated Efficacy Claims

Weight Loss Claims

77. The Willms defendants have represented that use of the AcaiBurn and PureCleanse products will cause rapid and substantial weight loss and that scientific evidence, including two eight-week, placebo-controlled clinical studies, shows that AcaiBurn and PureCleanse cause rapid and substantial weight loss. The following and other similar representations appeared in banner advertising approved by the Willms defendants for use by their affiliate marketers and also on multiples pages of the Willms defendants' websites:

- a. "Lose Weight Fast! Fit into your favorite Jeans! Lose Weight fast with AcaiBurn."
- b. "Fast + Natural Weight Loss! A system to help you burn calories faster is finally revealed in America!"
- c. "WARNING...The Acai Burn System was not created for those people who only want to lose a few measly pounds. The AcaiBurn System was created to help you achieve the incredible body you have always wanted...USE WITH CAUTION!"
- d. "BACKED BY CLINICAL RESEARCH The AcaiBurn System is simply fast weight loss that works. The key ingredients in AcaiBurn were clinically tested and found to help cause up to 450% MORE WEIGHT LOSS than dieting and exercising alone. Our risk-free trial is in very high demand, and will not be available forever. AcaiBurn is composed of a breakthrough new formula that

combines scientific clinical research with the amazing anti-oxidant power of Acai Berry.”

- e. “The average weight loss was 14.99 and 12.54 pounds with AcaiBurn’s key ingredients vs. just 3.06 and 3.53 pounds with a placebo in two 8-week clinical studies. Both groups dieted and exercised. That means the key ingredients in AcaiBurn were found to cause up to 450% MORE WEIGHT LOSS than dieting and exercise alone will get you.”
- f. “But the true power of PureCleanse Pro comes from clinically proven ingredients (Garcinia cambogia extract, chromium polynicotinate, and Gymnema sylvestre extract). The average weight loss was 14.99 and 12.54 pounds with PureCleanse’s key ingredients vs. just 3.06 and 3.53 pounds with a placebo in two 8-week clinical studies. Both groups dieted and exercised. That means the key ingredients in PureCleanse Pro were found to help cause up to 450% MORE WEIGHT LOSS than dieting and exercise alone will get you.”

78. The AcaiBurn and PureCleanse products do not cause rapid and substantial weight loss, and the Willms defendants did not possess and rely upon a reasonable basis to substantiate representations that consumers who use the AcaiBurn and PureCleanse products will rapidly lose a substantial amount of weight.

Colon Cancer Claims

79. The Willms defendants also have represented that use of PureCleanse products helps prevent the development of colon cancer. The Willms defendants have used an embedded

streaming video of a CBS Early Show interview with Katie Couric on many of the PureCleanse product websites. The title of the video clip is "CONQUERING COLON CANCER: PREVENTION AND TREATMENT." The video features, in addition to Ms. Couric, well known actors Diane Keaton, Morgan Freeman, and Jimmy Smits talking about the dangers of colon cancer. Statements made during the video include, but are not limited to:

- a. "Colon cancer is the #2 cancer killer in the United States."
- b. "Women get colon cancer as often as men."
- c. "Hispanics are more likely to be diagnosed in advanced states of colon cancer."
- d. "African-Americans have higher mortality rates from colon cancer."
- e. "130,000 people in the United States are diagnosed with colon cancer every year."
- f. "56,000 people die every year from colon cancer."
- g. "Everyone is vulnerable."

80. The Willms defendants juxtaposed the statements about the deadly nature of colon cancer contained in the Katie Couric interview with numerous representations about PureCleanse that implied that PureCleanse would help prevent the development of colon cancer. For example, the Willms defendants' websites have included one of more of the following statements:

- a. "Parasites & Toxic Build Up Could be haunting your body."
- b. "Promote Health & Longevity."
- c. "FLUSH BUILT UP WASTE."
- d. "Rid yourself of toxins and parasites."
- e. "Research-backed."

81. The PureCleanse products do not help prevent the development of colon cancer, and the Willms defendants did not possess and rely upon a reasonable basis to substantiate representations that the PureCleanse products will help prevent the development of colon cancer.

False Celebrity and Other Endorsements

82. In addition to claims about the efficacy of their products, the Willms defendants have displayed the images of celebrities, such as Oprah Winfrey and Rachael Ray, on their websites, and have represented to consumers that such celebrities have endorsed one or more of the Willms defendants' products. For example, one of the Willms defendants' websites for Pro AcaiBurn showed a picture of Rachel Ray and the statement "Featured on the Rachel Ray Show!"

83. Neither Oprah Winfrey nor Rachael Ray has endorsed any of the Willms defendants' products. Oprah Winfrey has sued Willms in the Southern District of New York for the unauthorized use of her name and likeness on his websites.

84. The Willms defendants also have placed on most of their websites the names and logos for many news agencies and other trusted entities including, but not limited to, CNN, MSNBC, USA Today, CBS, and 60 Minutes, in connection with statements like "Featured On" or "As Seen On TV." None of these entities have endorsed or positively reported on any of the Willms defendants' products.

COUNT I

**(NONDISCHARGEABLE DEBT FOR MONEY OBTAINED BY
FALSE PRETENSES, FALSE REPRESENTATIONS OR ACTUAL FRAUD)**

85. The Commission repeats and realleges the allegations in ¶¶ 7 through 84.

86. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of products, programs, or services, the Willms defendants have:

- a. represented, directly or indirectly, expressly or by implication, that consumers can obtain a product, program, or service on a “trial” basis, for “free,” or “risk-free” for only a nominal shipping and handling fee, or have represented that consumers can obtain a product, program, or service as a “bonus” for which consumers would not be charged;
- b. represented, directly or indirectly, expressly or by implication, that they will provide a full refund to consumers who request one;
- c. represented, directly or indirectly, expressly or by implication, that consumers who provide their billing information will incur no risks or obligations, not be charged, or pay only a nominal fee;
- d. failed to disclose, or disclose adequately, material terms and conditions of the offer, including, but not limited to, that:
 - i. consumers who sign up for some of the Willms defendants’ trial offers will be enrolled in a membership program and charged an upfront membership fee if they do not cancel within a certain time period;
 - ii. consumers who sign up for some of the Willms defendants’ penny auction programs will immediately be charged an upfront fee for registering for which there is no opportunity to cancel;

- iii. consumers who sign up for some of the Willms defendants' trial offers will be charged the full price for a month's supply of the product, or a month's access to the service or program, if they do not cancel and return the product within a certain time period;
- iv. consumers who sign up for some of the Willms defendants' penny auction programs or trial offers for consumer research services will be enrolled in a membership program and be charged a recurring monthly fee if they do not cancel within a certain time period; or
- v. consumers who sign up for some of the Willms defendants' trial offers will be enrolled in a membership program for upsell items and be charged recurring monthly fees if they do not cancel within a certain time period;
- e. represented, directly or indirectly, expressly or by implication, that consumers who sign up for one of the Willms defendants' trial offers or penny auction programs will incur no risks, that their satisfaction is guaranteed, or that they can obtain a full refund;
- f. failed to disclose, or disclose adequately, material terms and conditions relating to cancelling future charges or obtaining refunds including, but not limited to:
 - 1. that consumers who attempt to cancel and/or seek a refund must obtain a return tracking number from the Willms defendants before returning the product;

- ii. that consumers who seek to cancel and/or receive a refund will incur additional costs in returning the product including, but not limited to, paying for return shipping, insurance, and delivery confirmation;
- iii. that consumers who seek to cancel the upsell products must cancel each program separately within specific, different time periods to avoid additional charges; or
- iv. the process for consumers to cancel the monthly recurring charges associated with the Willms defendants' trial offers or penny auctions, and the details of defendants' cancellation and refund processes;
- g. represented, directly or indirectly, expressly or by implication, that use of AcaiBurn and PureCleanse will result in rapid and substantial weight loss, including the claim that individuals who used AcaiBurn or PureCleanse lost 450% more weight than those who only dieted and exercised;
- h. represented, directly or indirectly, expressly or by implication, that scientific evidence, including two eight-week, placebo-controlled clinical studies, shows that AcaiBurn and PureCleanse cause rapid and substantial weight loss;
- i. represented, directly or indirectly, expressly or by implication, that use of PureCleanse will aid in the prevention of colon cancer;
- j. represented, directly or indirectly, expressly or by implication, that their products are used, endorsed, or approved by specifically identified celebrities, such as Oprah Winfrey and Rachael Ray; and

- k. caused charges to be submitted for payment to the credit and debit cards of consumers without the express informed consent of consumers.

87. The Willms defendants' representations and omissions set forth in Paragraph 86 of this Complaint are false or misleading.

88. Defendant Milne provided merchant banks with false or misleading information to obtain and maintain merchant accounts through which the Willms defendants place charges on consumers' credit and debit card accounts. But for Defendant Milne's false or misleading representations, the Willms defendants' would not have been able to continue to process unauthorized charges to consumers' accounts.

89. Defendant Milne's activities described in Paragraph 88 were conducted with knowledge of the falsity of the representations, or with reckless disregard of the truth or falsity of the representations.

90. Defendant Milne's misrepresentations were material, and the merchant banks' reliance on Defendant Milne's misrepresentations, which caused consumers to be charged for undisclosed, unwanted, and unauthorized charges, was justifiable.

91. The total amount of compensation Defendant Milne earned for her activities described in Paragraph 88 was at least \$32,000, the amount of the monetary judgment against Defendant Milne in the Enforcement Action.

92. Consequently, Defendant Milne's judgment debt to the Commission under the District Court Judgment is one for money, property, or services obtained by false pretenses, false

representations or actual fraud, and is excepted from discharge pursuant to 11 U.S.C.

§ 523(a)(2)(A).

WHEREFORE, Plaintiff FTC requests that the Court:

(a) Determine that the monetary judgment against Defendant Milne under Section IV.A of the District Court Judgment in the Enforcement Action in the amount of \$32,000 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A);

(b) Enter judgment against Defendant Milne in the amount of \$32,000, which shall remain suspended but subject to reinstatement by the District Court in accordance with Sections IV.A and IV.G of the District Court Judgment; and

(c) Grant Plaintiff such other and further relief as this case may require and the Court deems just and proper.

Dated: _____

Respectfully Submitted,

/s/ Michael P. Mora
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Counsel for Plaintiff FTC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	ADV. PROC. NO. _____
CAREY L. MILNE,)	
)	
Defendant.)	
)	
IN RE:)	CASE NO. 11-35367
)	
THOMAS MILNE & CAREY L. MILNE,)	CHAPTER 13
)	
Joint Debtors.)	
)	

STIPULATION FOR ENTRY OF JUDGMENT FOR NONDISCHARGEABILITY OF DEBT

Plaintiff Federal Trade Commission ("FTC" or "Commission") filed a Complaint to Determine Nondischargeability of Debt under Section 523 of the Bankruptcy Code, 11 U.S.C. § 523 (the "Complaint") on _____, 201___. Defendant Carey L. Milne waives service of the Summons and Complaint, and agrees to entry of a Stipulated Judgment for Nondischargeability of Debt, as set forth herein.

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 523.
2. Venue in the District of Utah is proper under 28 U.S.C. § 1409(a).

3. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

4. This Adversary Proceeding relates to *In re Thomas Milne and Corey L. Milne*, Case No. 11-35367 (Chapter 13), now pending in this Court. The Commission is a creditor with a general unsecured claim against Defendant pursuant to a Judgment and Final Order ("District Court Judgment") entered in the United States District Court for the Western District of Washington at Seattle ("District Court") on _____, 201_, in the case styled *FTC v. Jesse Willms, et al.*, Case No. 2:11-cv-828-MJP ("Enforcement Action"). A copy of the District Court Judgment is attached hereto as Attachment "A."


5. The District Court Judgment includes a judgment in favor of the Commission and against Defendant in the principal amount of \$32,000. District Court Judgment Section IV.A. Based upon financial statements and supporting documents provided by Debtor to the Commission, the District Court conditionally suspended this judgment. The judgment may be reinstated by the District Court in accordance with Sections IV.A and IV.F of the District Court Judgment.

6. Under Section IV.E of the District Court Judgment, Defendant agreed that the District Court Judgment is not dischargeable in her bankruptcy case, and that she would execute this Stipulation for Entry of Judgment for Nondischargeability of Debt.

7. Accordingly, the parties respectfully request that the Court enter an order declaring that: (a) the judgment against Defendant under Section IV.A of the District Court Judgment in the amount of \$32,000 is excepted from discharge under 11 U.S.C. § 523(a)(2)(A);

and (b) under Sections IV.A and IV.F of the District Court Judgment, the judgment is suspended, subject to reinstatement by the District Court.

STIPULATED TO BY:



Carey L. Milne
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Herriman, UT 84096
Defendant

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