

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

– v. –

AMERICAN EVOICE, LTD., et al.,

Defendants,

and

BIBLIOLOGIC, LTD.,

Relief Defendant.

CIVIL ACTION

NO. 9:13-cv-00003-DLC

[PROPOSED]

**PRELIMINARY
INJUNCTION
ORDER**

Plaintiff Federal Trade Commission (“FTC” or “Commission”), having filed its Complaint pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and having filed a Motion for a Preliminary

Injunction pursuant to Fed. R. Civ. P. 65, and the Court having considered the Complaint, Plaintiff's Motion for a Preliminary Injunction, the declarations, exhibits, and memorandum of law filed in support thereof, any opposition thereto, and the entire record herein, hereby finds that:

1. This Court has jurisdiction over the parties and the subject matter of this case.
2. Venue lies properly in this Court.
3. Plaintiff FTC is likely to succeed on the merits of its claims that Defendants American eVoice, Ltd.; Emerica Media Corp.; FoneRight, Inc.; Global Voice Mail, Ltd.; HearYou2, Inc.; Network Assurance, Inc.; SecurDat, Inc.; Techmax Solutions, Inc.; Voice Mail Professionals, Inc.; Steven V. Sann; Terry D. Lane (a/k/a Terry D. Sann); Nathan M. Sann; and Robert M. Braach (collectively, "Defendants") have engaged in, and are likely to engage in, acts or practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
4. Plaintiff FTC is likely to succeed on the merits of its claims that Relief Defendant Bibliologic, Ltd., has received ill-gotten assets or otherwise benefitted from funds that are the proceeds of Defendants' unlawful acts or practices, and that Bibliologic has no legitimate claim to the ill-gotten assets in its possession.

5. Plaintiff FTC's Memorandum of Law in support of its Motion for a Preliminary Injunction and the accompanying declarations and exhibits demonstrate that Defendants have engaged in a concerted course of illegal activity by deceptively and unfairly placing unauthorized charges on consumers' telephone bills. Unless Defendants are restrained from doing so by Order of this Court, Defendants will remain free to continue placing unauthorized charges on consumers' telephone bills, thereby placing consumers at risk of substantial injury.
6. Plaintiff FTC has demonstrated a likelihood of immediate and irreparable damage to the Court's ability to grant effective final relief in the form of monetary restitution or disgorgement from the sale, transfer, or other disposition or concealment of assets by Defendants and Relief Defendant Bibliologic, and good cause therefore exists for freezing the assets of all Defendants and Relief Defendant Bibliologic and issuing the ancillary equitable relief contained herein.
7. Weighing the equities and considering Plaintiff's likelihood of ultimate success, the issuance of this Preliminary Injunction Order is in the public interest.

8. No security is required of any agency of the United States for issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

DEFINITIONS

For purposes of this Preliminary Injunction Order (“Order”), the following definitions shall apply:

1. “**Asset**” or “**Assets**” means any legal or equitable interest in, right to, or claim to any real or personal property including, but not limited to, “goods,” “instruments,” “equipment,” “fixtures,” “general intangibles,” “inventory,” “checks,” or “notes” (as these terms are defined in the Uniform Commercial Code), lines of credit, chattels, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and all cash, wherever located.
2. “**Corporate Defendants**” means American eVoice, Ltd.; Emerica Media Corp.; FoneRight, Inc.; Global Voice Mail, Ltd.; HearYou2, Inc.; Network Assurance, Inc.; SecurDat, Inc.; Techmax Solutions, Inc.; Voice Mail Professionals, Inc., as well as any affiliates, subsidiaries, successors, or assigns, and any fictitious business entities or business names created or used by these entities, or any of them.

3. **“Defendants”** means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
4. **“Document”** or **“Documents”** means any materials listed in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, digital records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or nonidentical copy is a separate document within the meaning of the term.
5. **“Financial Institution”** means any bank, savings and loan institution, credit union, or any financial depository of any kind, including, but not limited to, any brokerage house, trustee, broker-dealer, escrow agent, title company, commodity trading company, or precious metal dealer.
6. **“Individual Defendants”** means Steven V. Sann; Terry D. Lane (a/k/a Terry D. Sann); Nathan M. Sann; and Robert M. Braach.
7. **“Person”** means 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.

8. “**Relief Defendant**” means Bibliologic, Ltd.

ORDER

I. PROHIBITION AGAINST TELEPHONE BILLING

IT IS HEREBY ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and 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 hereby restrained and enjoined from causing or assisting others in causing charges to appear on any consumer’s landline or mobile telephone bill.

II. PROHIBITION AGAINST USE OF CONSUMER INFORMATION

IT IS FURTHER ORDERED that Defendants, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, employees, and 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 hereby restrained and enjoined from:

- A. Selling, renting, leasing, transferring, or otherwise disclosing the name, address, birth date, telephone number, email address, Social

Security number, credit or debit card number, bank account number, or other financial or identifying personal information of any individual from whom or about whom any Defendant obtained such information in connection with causing charges to appear on any consumer's telephone bill; or

- B. Benefitting from or using the name, address, birth date, telephone number, email address, Social Security number, credit or debit card number, bank account number, or other financial or identifying personal information of any individual from whom or about whom any Defendant obtained such information in connection with causing charges to appear on any consumer's telephone bill;

Provided, however, that Defendants may disclose such financial or identifying personal information to a law enforcement agency or as required by any law, regulation, or court order.

III. ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and Relief Defendant, and their officers, agents, servants, employees, and 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, whether acting directly or through any

trust, corporation, subsidiary, division, or other device, or any of them, except as provided herein, as stipulated by the parties, or as directed by further order of the Court, are hereby restrained and enjoined from:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security interest or other interest in, or otherwise disposing of any asset, or any interest therein, wherever located, including outside the territorial United States, that is owned, controlled by, or in the actual or constructive possession of, in whole or in part:

1. Any Defendant or Relief Defendant;
2. Any other person and held for the benefit of, subject to access by, or belonging to, any Defendant or Relief Defendant in this action, including, but not limited to, any assets held for the benefit of, subject to access by, or belonging to, any Defendant or Relief Defendant in any account at any financial institution, or with any credit card processing agent, automated clearing house processor, network transaction processor, bank debit processing agent, telecommunications billing aggregator, customer service agent, commercial mail receiving agency, mail

holding or forwarding company, retirement fund custodian, money market or mutual fund, storage company, trustee, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or any other third party, including any retainers or other funds held in trust by counsel for any Defendant or Relief Defendant; or

3. Any other corporation, partnership, trust, foundation, or any other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Defendant or Relief Defendant;

- B. Opening, causing to be opened, or otherwise accessing any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of any Defendant or Relief Defendant, or subject to access by any Defendant or Relief Defendant or under any Defendant's or Relief Defendant's control, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets covered by this Section;
- C. Cashing any checks or depositing any payments from customers or clients of Defendants or Relief Defendant; or

- D. Incurring liens or encumbrances on real property, personal property, or other assets in the name, singly or jointly, of any Defendant or Relief Defendant, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any Defendant or Relief Defendant.

The funds, property, or other assets affected by Sections III, VI and VIII of this Order include: (1) all funds, property, or other assets of any Defendant or Relief Defendant as of entry of this Order; and (2) any funds, property, or other assets acquired after entry of this Order if such funds, property, or other assets are derived from or otherwise relate to the placement of charges on consumers' telephone bills.

IV. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the Individual Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, agent, attorney, and representative of Defendants and Relief Defendant, and shall, within seven (7) days following entry of this Order, provide the Commission with a sworn statement that the Individual Defendant has complied with this provision

of the Order. The statement shall include the names and addresses of each such person or entity who received a copy of the Order.

V. FINANCIAL STATEMENTS AND ACCOUNTING

IT IS FURTHER ORDERED that, within seven (7) days following entry of this Order:

- A. The Individual Defendants shall prepare and deliver to counsel for the Commission a completed financial statement on the form captioned “Financial Statement of Individual Defendant,” attached to this Order as Attachment A;
- B. Each Corporate Defendant and Relief Defendant shall also prepare and deliver to Counsel for the Commission a completed “Financial Statement of Corporate Defendant,” attached to this Order as Attachment B; and
- C. For each business entity owned, controlled, or managed by any Individual Defendant, regardless of whether it is a defendant in this case, the Individual Defendant shall also prepare and deliver to Counsel for the Commission a completed “Financial Statement of Corporate Defendant,” attached to this Order as Attachment B.

- D. Each Defendant and Relief Defendant shall provide the Commission a list of all assets valued over \$1000 transferred, liquidated, converted, encumbered, pledged, loaned, sold, assigned, spent, withdrawn, or otherwise disposed of since the date of the filing of the Commission's Complaint in this action.

VI. REPATRIATION OF ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that Defendants and Relief Defendant shall:

- A. Within forty-eight (48) hours following entry of this Order, take such steps as are necessary to repatriate to the territory of the United States of America all documents and assets that are located in a country other than the United States or Canada and are held by or for Defendants or Relief Defendant, or are under Defendants' or Relief Defendant's direct or indirect control, jointly, severally, or individually;
- B. Within forty-eight (48) hours following entry of this Order, provide Plaintiff with a full accounting of all documents and assets subject to repatriation pursuant to Subsection A, including the addresses and names of any foreign or domestic financial institution or other entity

holding the documents and assets, along with the account numbers and balances;

- C. Hold and retain all such documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such documents or assets; and
- D. Within forty-eight (48) hours following entry of this Order, provide Plaintiff access to Defendants' and Relief Defendant's records and documents held by financial institutions or other persons outside the territorial United States, by signing and delivering to Plaintiff's counsel the Consent to Release of Financial Records, attached to this Order as Attachment C.

VII. PRESERVATION OF RECORDS

IT IS FURTHER ORDERED that Defendants and Relief Defendant, and their officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under their control or under common control with any of them, and all other persons in active concert or participation with them who receive actual notice of this Order, are hereby restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the business

practices or business or finances of any of the Defendants or Relief Defendant, and to the business practices of entities that are directly or indirectly under control of any of the Defendants or Relief Defendant, or under common control with any of the Defendants or Relief Defendant. Any third party having such documents in its possession, custody, or control, and which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, is also restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, such documents. This Section specifically applies to all documents displayed on or accessible from any Internet website owned or controlled by Defendants or Relief Defendant, including, but not limited to, the following domain names: americanevoice.com, foneright.com, mytechmax.com, myvoicemailprofessionals.com, myvoicemailsolutions.com, bibliologic.net, bibliologic.org, bibliologic.com, emericahosting.com, myamericanevoice.com, voicemailprof.com, emericamedia.com, mynetworkassurance.com, voicemailprofessionals.com, techmaxsolutions.com, secureatdat.com, hearyou2.com.

VIII. DUTIES OF FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES

IT IS FURTHER ORDERED that any financial institution, business entity, or other person maintaining or having custody or control of any account, other asset, or documents of any Defendant, Relief Defendant, or any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with, any Defendant or Relief Defendant, which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance, disbursement, dissipation, conversion, sale, liquidation, destruction, or other disposal of any of the assets, funds, documents, or other property held by, or under its control:
 - 1. on behalf of, or for the benefit of, any Defendant, Relief Defendant, or any other party subject to Section III above;
 - 2. in any account maintained in the name of, or for the benefit of, or subject to withdrawal by, any Defendant, Relief Defendant, or other party subject to Section III above; or

3. that are subject to access or use by, or under the signatory power of, any Defendant, Relief Defendant, or other party subject to Section III above.
- B. Deny Defendants and Relief Defendant, unless accompanied by a representative of the Commission, access to any safe deposit boxes or storage facilities that are either:
1. titled in the name, individually or jointly, of any Defendant, Relief Defendant, or other party subject to Section III above; or
 2. otherwise subject to access by any Defendant, Relief Defendant, or other party subject to Section III above.
- C. Provide the Commission, within three (3) days of the date of service of this Order, a sworn statement setting forth:
1. The identification number of each account or other asset titled in the name, individually or jointly, of any Defendant or Relief Defendant, or held on behalf of, or for the benefit of, any Defendant, Relief Defendant, or other party subject to Section III above, including all trust accounts managed on behalf of any Defendant or Relief Defendant, or subject to any Defendant's or Relief Defendant's control;

2. The balance of each such account, or a description of the nature and value of such asset as of the time this Order is served;
 3. The identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant or Relief Defendant, or is otherwise subject to access or control by any Defendant, Relief Defendant, or other party subject to Section III above, whether in whole or in part; and
 4. If the account, safe deposit box, storage facility, or other asset has been closed or removed, the date closed or removed and the balance on said date.
- D. Allow representatives of Plaintiff access to inspect and copy, or upon Plaintiff's request, within seven (7) days of said request, provide the Commission with copies of, all records or other documents pertaining to each such account or other asset, including, but not limited to, originals or copies of account applications, account statements, corporate resolutions, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

**IX. SERVICE UPON FINANCIAL INSTITUTIONS
AND OTHER THIRD PARTIES**

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile, U.S. first class mail, private courier, overnight delivery, email, other electronic means, or personally, by agents or employees of Plaintiff, by any law enforcement agency, or by private process server, upon any financial institution, other entity, or person that may have possession, custody, or control of any account, other asset, or document identified in Section VIII above, or that may be otherwise subject to any provision of this Order. Service upon any branch or office any financial institution shall effect service upon the entire financial institution. For purposes of service upon anyone in possession of documents or assets subject to this Order, actual notice of this Order shall be deemed to have been provided upon service of pages 1 through 21 of this Order.

X. RECORDS MAINTENANCE AND NEW BUSINESS ACTIVITY

IT IS FURTHER ORDERED that Defendants, Relief Defendant, and their officers, agents, servants, employees, and 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, whether acting directly or through any trust,

corporation, subsidiary, division, or other device, or any of them, are hereby restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, bank statements, current accountants' reports, general ledgers, general journals, cash receipt ledgers, cash disbursement ledgers and source documents, documents indicating title to real or personal property, and any other data which, in reasonable detail, accurately, fairly and completely reflect the incomes, disbursements, transactions, dispositions, and uses of the Defendants' or Relief Defendant's assets;
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents, including electronically-stored materials, that relate in any way to the business practices or business or personal finances of Defendants or Relief Defendant; to the business practices or finances of entities directly or indirectly under the control of Defendants or Relief Defendant; or to the business practices or finances of entities directly or indirectly under common control with any other Defendant or Relief Defendant; and
- C. Creating, operating, or exercising any control over any new business entity, whether newly formed or previously inactive, including any

partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first providing Plaintiff with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities.

X. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that pursuant to Federal Rules of Civil Procedure 26(d), discovery may commence at any time after the entry of this Order.

XI. CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF

IT IS FURTHER ORDERED that for purposes of compliance with this Order, all correspondence and service of documents upon Plaintiff shall be addressed to

Richard McKewen
Kathryn C. Decker
Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, WA 98174
(206) 220-6350 [telephone]
(206) 200-6366 [facsimile]

rmckewen@ftc.gov
kdecker@ftc.gov

XII. CONSUMER REPORTING AGENCIES

IT IS FURTHER ORDERED that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency which is served with a copy of this Order, or otherwise has actual or constructive knowledge of this Order, shall, upon request of Plaintiff, provide to Plaintiff a consumer or credit report concerning any Defendant.

XIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED this ____ day of _____, 2013

UNITED STATES DISTRICT JUDGE