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NOTE: CHANGES HAVE BEEN
MADE TO THIS DOCUMENT

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16 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

17 _____)
18 FEDERAL TRADE COMMISSION,)

19 Plaintiff,)

20 v.)

21 TONO RECORDS, dba TONO)
22 MUSIC and PROFESSIONAL LEGAL)
23 SERVICES, a corporation; *et al.*,)

24 Defendants.)
25 _____)
26)
27)
28)

) Case No. CV-07-3786 JFW (RCX)
)
) **FINAL JUDGMENT**
) **AND ORDER FOR**
) **PERMANENT INJUNCTION**
) **AGAINST DEFENDANTS**
) **TONO RECORDS, TONO**
) **PUBLISHING, AND PROMO**
) **MUSIC**

1 Plaintiff, the Federal Trade Commission, having commenced this action by
2 filing the Complaint herein; Defendants Tono Records, dba Tono Music and
3 Professional Legal Services; Tono Publishing; and Promo Music (hereinafter the
4 “Defendant Corporations”), having been served with the Summons and
5 Complaint; the Defendant Corporations having not appeared in this matter, having
6 not filed an answer and being not represented by counsel; the Clerk of the Court
7 having entered defaults against each of the defendant corporations; and it
8 appearing that it is appropriate that judgment by default be entered against each of
9 the Defendant Corporations,

10 This Court hereby enters this Final Judgment and Order for Permanent
11 Injunction against Tono Records, dba Tono Music and Professional Legal
12 Services; Tono Publishing; and Promo Music.

13 **FINDINGS**

14 1. This Court has jurisdiction of the subject matter and of the parties.

15 2. The Complaint states a claim upon which relief may be granted
16 against the Defendant Corporations under Sections 5(a), 5(m)(1)(A), 13(b), and
17 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a),
18 45(m)(1)(A), 53b, and 56(a), and Section 814 of the Fair Debt Collection Practices
19 Act (“FDCPA”), 15 U.S.C. §1692l.

20 3. Venue in this district is proper under 28 U.S.C. §§ 1391 (b-c) and
21 1395(a) and 15 U.S.C. § 53(b).

22 4. The activities of the Defendant Corporations are in or affecting
23 commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

24 5. The Defendant Corporations have engaged in the conduct alleged in
25 Counts One through Five of the Complaint.

26 6. The Defendant Corporations’ practices constitute deceptive acts and
27 practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

28 7. The Defendant Corporations are “debt collectors” as that term is

1 defined in Section 803(6) of the FDCPA, 15 U.S.C. § 1692a(6).

2 8. The Defendant Corporations' practices constitute violations of the
3 FDCPA, 15 U.S.C. § 1692 *et seq.*

4 9. The Defendant Corporations' conduct has resulted in substantial
5 injury to consumers who were induced by deceptive conduct or coercive means to
6 pay alleged debts that they did not owe.

7 10. The Defendant Corporations' violations of law are likely to continue
8 in the absence of permanent injunctive relief.

9 11. Entry of this Order is in the public interest.

10 **ORDER**

11 **DEFINITIONS**

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

13 A. Unless otherwise specified, the "Defendant Corporations" means
14 Tono Records, dba Tono Music and Professional Legal Services; Tono Publishing;
15 and Promo Music.

16 B. "Commerce" means as defined in Section 4 of the Federal Trade
17 Commission Act, 15 U.S.C. § 44.

18 C. "FTC" or "Commission" means the Federal Trade Commission.

19 D. A requirement that the Defendant Corporations "notify the
20 Commission" means that the Defendant Corporations shall send the necessary
21 information via first class mail, costs prepaid, to the Associate Director for
22 Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue, N.W.,
23 Washington, DC 20580. Attn: *FTC v. Tono Records, et al.*, Civ. No. 07-3786-
24 JFW (C.D. Cal.).

25 E. The term "including" in this Order means "including, without
26 limitation."

27 F. The terms "and" and "or" in this Order shall be construed
28 conjunctively or disjunctively as necessary, to make the applicable phrase or

1 sentence inclusive rather than exclusive.

2 G. The definitions set forth in the FDCPA, 15 U.S.C. § 1692a, shall
3 apply.

4 **I. INJUNCTION**

5 Defendants Tono Records, Inc., dba Tono Music and Professional Legal
6 Services; Tono Publishing, Inc.; and Promo Music, Inc., and their officers, agents,
7 servants, employees, and all other persons or entities in active concert or
8 participation with them who receive actual notice of this Decree by personal
9 service or otherwise, whether acting directly or through any business entity,
10 corporation, subsidiary, division, affiliate, or other device, are hereby permanently
11 restrained and enjoined from taking the following actions:

12 **VIOLATING THE FTC ACT**

13 A. Misrepresenting to consumers, expressly or by implication, that:

- 14 1. The alleged obligation that Defendants are attempting to collect
15 is a valid debt;
- 16 2. Defendants are an attorney or are working on behalf of an
17 attorney;
- 18 3. Defendants will take any action that cannot legally be taken or
19 that Defendants do not intend to take, such as filing a lawsuit;
20 and
- 21 4. Nonpayment of an alleged obligation will result in a
22 consumer's arrest or imprisonment, or lead to seizure,
23 garnishment, or attachment of a consumer's property or wages;

24 B. Making a misrepresentation, expressly or by implication, about the
25 consequences of paying or not paying a debt, in whole or in part;

26 C. Making any material misrepresentation, expressly or by
27 implication, to collect or to attempt to collect a debt;

28 D. Misrepresenting, directly, indirectly, expressly, or by implication,

1 or omitting, any fact material to a person's decision to purchase or use any
2 product, program, or service;

3 **VIOLATING THE FDCPA**

4 E. Using any false, deceptive, or misleading representations or
5 means in connection with the collection of any debt, in violation of Section 807 of
6 the FDCPA, 15 U.S.C. § 1692e, including, but not limited to:

- 7 1. Misrepresenting the character, amount, or legal status of a debt,
8 in violation of Section 807(2)(A) of the FDCPA, 15 U.S.C. §
9 1692e(2)(A);
- 10 2. Representing or implying that collectors are attorneys or
11 representatives of an attorney or that a communication is from
12 an attorney, in violation of Section 807(3) of the FDCPA, 15
13 U.S.C. § 1692e(3);
- 14 3. Representing or implying that nonpayment of a debt will result
15 in the arrest or imprisonment of any person or the seizure,
16 garnishment, attachment, or sale of any property or wages of
17 any person, unless at the time of the representation, such action
18 is lawful and Defendants intend to take such action, in violation
19 of Section 807(4) of the FDCPA, 15 U.S.C. § 1692e(4);
- 20 4. Representing or implying that any action will be taken, unless
21 at the time of the representation such action is lawful and
22 Defendants intend to take such action, or that any action may
23 be taken when Defendants cannot show that, at the time of the
24 representation, there is a reasonable likelihood that such action
25 will be taken, in violation of Section 807(5) of the FDCPA, 15
26 U.S.C. § 1692e(5); and
- 27 5. Using a business name other than the collector's real name, in
28 violation of Section 807(14) of the FDCPA, 15 U.S.C.

1 § 1692e(14);

2 F. Collecting or attempting to collect debts, the amount
3 of which, including any interest, fee, charge, or expense incidental to the principal
4 obligation, is not expressly authorized by the agreement creating the debt or
5 permitted by law, in violation of Section 808(1) of the FDCPA, 15 U.S.C. §
6 1692f(1);

7 G. Engaging in any conduct the natural consequence of which
8 is to harass, oppress, or abuse a person, in violation of Section 806 of the FDCPA,
9 15 U.S.C. § 1692d, including, but not limited to, causing a telephone to ring, or
10 engaging a person in telephone conversation, repeatedly or continuously, with the
11 intent to annoy, abuse, or harass a person at the number called, in violation of
12 Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5);

13 H. Failing to notify consumers of their right to dispute
14 and obtain verification of their debts and to obtain the name of the original
15 creditor, either in Defendants' initial communication with consumers or within
16 five days thereafter, in violation of Section 809(a) of the FDCPA, 15 U.S.C. §
17 1692g(a); and

18 I. Engaging in any other act or practice that would violate the
19 FDCPA, 15 U.S.C. § 1692, as attached and as hereafter amended.

20 **II. NOTICE REQUIREMENTS**

21 A. For a period of five (5) years from the date of entry of this Decree,
22 Defendants Tono Records, Tono Publishing, and Promo Music, as well as their
23 successors and assigns, and their officers, agents, servants, employees, and all
24 other persons or entities in active concert or participation with any of them who
25 receive actual notice of this Decree by personal service or otherwise, whether
26 acting directly or through any business entity, corporation, subsidiary, division,
27 affiliate, or other device, in connection with acting as a "debt collector" in the
28 collection of a "debt" from a "consumer," as those terms are defined in Section

1 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C. § 1692a(6), (5), and
2 (3), shall make the following disclosure clearly and conspicuously on each written
3 collection communication that is sent to a consumer for the purpose of collecting a
4 debt:

5 Federal law prohibits certain methods of
6 debt collection, and requires that we treat
7 you fairly. If you write to us and ask us to
8 stop communicating with you about this
9 debt, we will cease contacting you. Sending
10 such a letter does not make the debt go
11 away if you owe it. Once we receive your
12 letter, we may not contact you again, except
13 to let you know that there won't be any
14 more contact or that we intend to take a
15 specific action.

16 If you have a complaint about the way we
17 are collecting this debt, please write to our
18 CONTACT CENTER, [current physical
19 address], email us at [current email
20 address], or call us toll-free at [current
21 phone number] between 9:00 A.M. Pacific
22 Time and 5:00 P.M. Pacific Time Monday -
23 Friday.

24 The Federal Trade Commission enforces the
25 Fair Debt Collection Practices Act
26 (FDCPA). If you have a complaint about
27 the way we are collecting your debt, please
28 contact the FTC online at www.ftc.gov; by
phone at 1-877-FTC-HELP; or by mail at
600 Pennsylvania Ave. NW, Washington,
DC 20580.

B. The above disclosure shall be given in the languages which appear in
such communications sent to consumers.

1 C. Defendants Tono Records, Tono Publishing, and Promo Music, as
2 well as their successors and assigns, and their officers, agents, servants,
3 employees, and all other persons or entities in active concert or participation with
4 any of them who receive actual notice of this Decree by personal service or
5 otherwise, whether acting directly or through any business entity, corporation,
6 subsidiary, division, affiliate, or other device, in connection with acting as a “debt
7 collector” in the collection of a “debt” from a “consumer,” as those terms are
8 defined in Section 803(6), (5), and (3), respectively, of the FDCPA, 15 U.S.C.
9 § 1692a(6), (5), and (3), shall provide a copy of the following notice to all officers,
10 servants, agents, and employees having responsibility with respect to the
11 collection of debts, within thirty (30) days of the date of entry of this Decree, and
12 to each employee hired for a period of five (5) years after that date, no later than
13 the time the employee assumes responsibility with respect to the collection of such
14 debts, and shall secure from each such person, within thirty (30) days of delivery,
15 a signed and dated statement acknowledging receipt of a copy of the notice:

16 Debt collectors must comply with the
17 federal Fair Debt Collection Practices Act,
18 which limits your activities in trying to
19 collect money from consumers

20 Section 806 of the Act states that you may
21 not engage in any conduct the natural
22 consequence of which is to harass, oppress,
23 or abuse any person in connection with the
24 collection of a debt.

25 Section 807 of the Act prohibits you from
26 representing or implying that any action,
27 including legal action, will be taken unless,
28 at the time of the representation, such action
is lawful and there is a clear intent to take
the action. Further, Section 807 of the Act

1 prohibits the use of any false representation
2 or deceptive means to collect or attempt to
3 collect any debt or to obtain information
4 concerning a consumer.

5 Individual debt collectors may be financially liable
6 for their violations of the Act.

7 **III. DISTRIBUTION OF CONSENT DECREE BY DEFENDANTS**

8 A. For a period of three (3) years from the date of entry
9 of this Order, Defendants Tono Records, Tono Publishing, and Promo Music shall
10 deliver copies of this Order and the FDCPA to all principals, officers, directors,
11 and managers of such defendant. Such defendant must also deliver copies of this
12 Order and the FDCPA to all employees, agents, and representatives of that
13 business who engage in conduct related to the subject matter of this Order. For
14 current personnel, delivery shall be within five (5) days of service of this Order
15 upon defendant. For new personnel, delivery shall occur prior to their assuming
16 their responsibilities.

17 B. Defendants Tono Records, Tono Publishing, and Promo Music must
18 secure a signed and dated statement acknowledging receipt of this Order and the
19 FDCPA, within thirty (30) days of delivery, from all persons receiving copies of
20 the Order and the FDCPA pursuant to this Paragraph.

21 **IV. RECORD KEEPING PROVISIONS**

22 For a period of six (6) years from the date of entry of this Decree,
23 Defendants Tono Records, Tono Publishing, and Promo Music, and their agents,
24 employees, officers, corporations, successors, and assigns, and those persons in
25 active concert or participation with them who receive actual notice of this Decree
26 by personal service or otherwise, are hereby restrained and enjoined from failing
27 to create and retain the following records:

28 A. Accounting records that reflect the costs of good or services sold,
revenues generated, and the disbursement of such revenues;

1 B. Personnel records accurately reflecting the name, address, and
2 telephone number of each person employed in any capacity by such business,
3 including as an independent contractor; that person's job title or position; the date
4 upon which the person commenced work; and the date and reason for the person's
5 termination, if applicable;

6 C. Customer files containing the names, addresses, phone numbers,
7 dollar amounts paid, quantity of items or services purchased, and descriptions of
8 items or services purchased, to the extent such information is obtained in the
9 ordinary course of business;

10 D. Complaints and refund requests (whether received directly, indirectly,
11 or through any third party) and any responses to those complaints or requests;

12 E. Copies of all sales scripts, training materials, advertisements, or other
13 promotional or marketing materials; and

14 F. All records and documents necessary to demonstrate full compliance
15 with each provision of this Decree, including, but not limited to, copies of
16 acknowledgments of receipt of this Decree, required by Paragraph III.B, and all
17 reports submitted to the FTC pursuant to Paragraph V.

18 **V. COMPLIANCE REPORTING BY DEFENDANTS**

19 In order that compliance with the provisions of this Decree may be
20 monitored:

21 A. For a period of three (3) years from the date of entry of this Decree,
22 Defendants Tono Records, Tono Publishing, and Promo Music shall notify the
23 Commission of any changes in corporate structure of Tono Records, Tono
24 Publishing, Promo Music, including, but not limited to, a dissolution, assignment,
25 sale, merger, or other action that would result in the emergence of a successor
26 entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages
27 in any acts or practices subject to this Decree; the filing of a bankruptcy petition;
28 or a change in the corporate name or address, at least thirty (30) days prior to such

1 change, *provided* that, with respect to any proposed change in the corporation
2 about which the Defendants learn less than thirty (30) days prior to the date such
3 action is to take place, the Defendant Corporations shall notify the Commission as
4 soon as is practicable after obtaining such knowledge.

5 B. One hundred and eighty (180) days after the date of entry of this
6 Decree, Defendants Tono Records, Tono Publishing, and Promo Music each shall
7 provide a written report to the FTC, sworn to under penalty of perjury, setting
8 forth in detail the manner and form in which they have complied and are
9 complying with this Order. This report shall include, but not be limited to:

- 10 1. The then-current residence address, mailing addresses, and
11 telephone numbers of such Defendant Corporation;
- 12 2. Any other changes required to be reported under Subparagraph
13 A of this Part.

14 C. For the purposes of this Order, Defendants shall, unless otherwise
15 directed by the Commission's authorized representatives, mail all written
16 notifications to the Commission to:

17 Associate Director for Enforcement

18 Federal Trade Commission

19 600 Pennsylvania Avenue, N.W.

20 Washington, DC 20580.

21 Attn: *FTC v. Tono Records, et al.*, Civ. No. 07-3786-

22 JFW (C.D. Cal.).

23 **VI. COMPLIANCE MONITORING**

24 For the purpose of monitoring and investigating compliance with any
25 provision of this Decree:

26 A. Within ten (10) days of receipt of written notice from a representative
27 of the Commission, Defendants Tono Records, Tono Publishing, and Promo
28 Music each shall submit additional written reports, sworn to under penalty of

1 perjury; produce documents for inspection and copying; appear for deposition;
2 and/or provide entry during normal business hours to any business location in such
3 Defendant Corporations's possession or direct or indirect control to inspect the
4 business operation;

5 B. In addition, the Commission is authorized to monitor compliance
6 with this Order by all other lawful means, including, but not limited to, the
7 following:

8 1. Obtaining discovery from any person, without further leave of
9 court, using the procedures prescribed by Fed. R. Civ. P. 30,
10 31, 33, 34, 36, and 45; and

11 2. Posing as consumers and suppliers to the Defendant
12 Corporations or their employees, or any other entity managed
13 or controlled in whole or in part by the Defendant Corporations
14 without the necessity of identification or prior notice; and

15 C. The Defendant Corporations each shall permit representatives of the
16 Commission to interview any employer, consultant, independent contractor,
17 representative, agent, or employee who has agreed to such an interview, relating in
18 any way to any conduct subject to this Order. The person interviewed may have
19 counsel present.

20 *Provided, however,* that nothing in this Decree shall limit the Commission's
21 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act,
22 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things,
23 testimony, or information relevant to unfair or deceptive acts or practices in or
24 affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

25 **VIII. ACKNOWLEDGMENT OF RECEIPT**

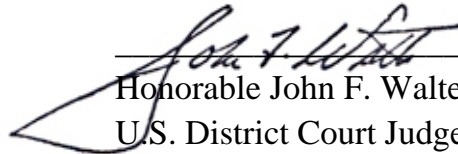
26 The Defendant Corporations, within five (5) business days of receipt of this
27 Decree as entered by the Court, must each submit to the Commission a truthful
28 sworn statement acknowledging receipt of this Decree.

1 ~~IX. RETENTION OF JURISDICTION~~ (paragraph stricken by court) JFW

2 ——— This Court shall retain jurisdiction of this matter for purposes of ——— construction,
3 modification, and enforcement of this Decree.

4 **JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against
5 Defendants, pursuant to all the terms and conditions recited above.

6
7 DATED: May 27, 2008

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9 _____
10 Honorable John F. Walter
11 U.S. District Court Judge
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