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 17 Federal Trade Commission

18 UNITED STATES DISTRICT COURT
 19 CENTRAL DISTRICT OF CALIFORNIA

20 FEDERAL TRADE COMMISSION,

21 Plaintiff,

22 v.

23 MDK MEDIA INC., a California corporation
 24 also doing business as SE VENTURES, GMK
 25 COMMUNICATIONS, and EMG;

26 MAKONNEN DEMESSOW KEBEDE,
 27 individually and as an officer and owner of
 28 MDK Media Inc.;

ERDI DEVELOPMENT LLC, a California
 limited liability company;

ERDOLO LEVY EROMO, individually and
 as a member of Erdi Development LLC;

OCEAN TACTICS, LLC, a California limited
 liability company;

FRASER R. THOMPSON, individually and as
 a member of Ocean Tactics, LLC;

PHWOAR LLC, a California limited liability
 company;

Case No. CV14-05099-JFW-SHx

FIRST AMENDED
 COMPLAINT FOR
 PERMANENT INJUNCTION
 AND OTHER EQUITABLE
 RELIEF

1 DARCY MICHAEL WEDD, individually and
2 as a member of Phwoar LLC;

3 CONCISE CONSULTING, INC., a California
4 corporation;

5 MMJX CONSULTING, INC., a Texas
6 corporation;

7 MICHAEL PETER PAJACZKOWSKI,
8 individually and as an owner of Concise
9 Consulting, Inc., and MMJX Consulting, Inc.;

10 TENDENCI MEDIA LLC, a California
11 limited liability company;

12 SARAH ANN BREKKE, individually and as a
13 member of Tendenci Media LLC;

14 MINDKONTROL INDUSTRIES LLC, a
15 California limited liability company;

16 CHRISTOPHER THOMAS DENOVELLIS,
17 individually and as a member of Mindkontrol
18 Industries LLC;

19 ANACAPA MEDIA LLC, a California limited
20 liability company;

21 WAYNE CALVIN BYRD II, individually and
22 as a member of Anacapa Media LLC;

23 BEAR COMMUNICATIONS LLC, a
24 California limited liability company;

25 JAMES MATTHEW DAWSON, individually
26 and as a member of Bear Communications
27 LLC;

28 NETWORK ONE COMMERCE INC., a
Nevada corporation; and

CASEY LEE ADKISSON, individually and as
an officer and owner of Network One
Commerce Inc.,

Defendants.

1 Plaintiff, the **Federal Trade Commission** (“FTC”), for its First Amended
2 Complaint alleges:

3 1. The FTC brings this action under Section 13(b) of the Federal Trade
4 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary,
5 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
6 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
7 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the
8 FTC Act, 15 U.S.C. § 45(a). As explained herein, Defendants have engaged in a
9 widespread scheme to place unauthorized third-party charges on consumers’
10 mobile phone bills, a harmful and illegal practice known as “cramming.”

11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
13 §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

14 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), (c)(1)
15 and (2), and (d), and 15 U.S.C. § 53(b).

16 **PLAINTIFF**

17 4. The FTC is an independent agency of the United States Government
18 created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC
19 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
20 affecting commerce.

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

26 **DEFENDANTS**

27 6. Defendant **MDK Media Inc.** (“MDK”) is a California corporation
28 with its principal place of business in Gardena, California. It also does business as

1 “SE Ventures,” “GMK Communications,” and “EMG.” MDK transacts or has
2 transacted business in this District and throughout the United States.

3 7. Defendant **Makonnen Demessow Kebede** (“Kebede”) is the sole
4 owner and officer of MDK. At all times material to this complaint, acting alone or
5 in concert with others, Kebede formulated, directed, controlled, had the authority
6 to control, or participated in the acts and practices of MDK, Tendenci,
7 Mindkontrol, Anacapa, Bear, and Network One, as set forth in this Complaint.
8 Kebede resides in this District and, in connection with the matters alleged herein,
9 transacts or has transacted business in this District and throughout the United
10 States.

11 8. Defendant **Erdi Development LLC** (“Erdi Development”) is a
12 California limited liability company with its principal place of business in Los
13 Angeles, California. Erdi Development transacts or has transacted business in this
14 District and throughout the United States.

15 9. Defendant **Erdolo Levy Eromo** (“Eromo”) is the owner and sole
16 member of Erdi Development. At all times material to this complaint, acting alone
17 or in concert with others, Eromo formulated, directed, controlled, had the authority
18 to control, or participated in the acts and practices of Erdi Development, MDK,
19 Tendenci, Mindkontrol, Anacapa, Bear, and Network One, as set forth in this
20 Complaint. Defendant Eromo resides in this District and, in connection with the
21 matters alleged herein, transacts or has transacted business in this District and
22 throughout the United States.

23 10. Defendant **Ocean Tactics, LLC** (“Ocean Tactics”) is a California
24 limited liability company with its principal place of business in Pacific Palisades,
25 California. Ocean Tactics transacts or has transacted business in this District and
26 throughout the United States.

27 11. Defendant **Fraser R. Thompson** (“Thompson”) is the owner and sole
28 member of Ocean Tactics. At all times material to this complaint, acting alone or

1 in concert with others, Thompson formulated, directed, controlled, had the
2 authority to control, or participated in the acts and practices of Ocean Tactics,
3 MDK, Tendenci, Mindkontrol, Anacapa, Bear, and Network One, as set forth in
4 this Complaint. Defendant Thompson resides in this District and, in connection
5 with the matters alleged herein, transacts or has transacted business in this District
6 and throughout the United States.

7 12. Defendant **Phwoar LLC** (“Phwoar”) is a California limited liability
8 company with its principal place of business in Los Angeles, California. Phwoar
9 transacts or has transacted business in this District and throughout the United
10 States.

11 13. Defendant **Darcy Michael Wedd** (“Wedd”) is an owner and/or
12 member of Phwoar. At all times material to this complaint, acting alone or in
13 concert with others, Wedd formulated, directed, controlled, had the authority to
14 control, or participated in the acts and practices of Phwoar, MDK, Tendenci,
15 Mindkontrol, Anacapa, Bear, and Network One, as set forth in this Complaint.
16 Defendant Wedd resides in this District and, in connection with the matters alleged
17 herein, transacts or has transacted business in this District and throughout the
18 United States.

19 14. Defendant **Concise Consulting, Inc.** (“Concise Consulting”) is a
20 California corporation with its principal place of business in Los Angeles,
21 California. Concise Consulting transacts or has transacted business in this District
22 and throughout the United States.

23 15. Defendant **MMJX Consulting, Inc.** (“MMJX”) is a Texas
24 corporation with its principal place of business in Plano, Texas. MMJX transacts
25 or has transacted business in this District and throughout the United States.

26 16. Defendant **Michael Peter Pajaczkowski** (“Pajaczkowski”) is an
27 owner and/or officer of Concise Consulting and MMJX. At all times material to
28 this complaint, acting alone or in concert with others, Pajaczkowski formulated,

1 directed, controlled, had the authority to control, or participated in the acts and
2 practices of Concise Consulting, MMJX, MDK, Tendenci, Mindkontrol, Anacapa,
3 Bear, and Network One, as set forth in this Complaint. Defendant Pajaczkowski,
4 in connection with the matters alleged herein, transacts or has transacted business
5 in this District and throughout the United States.

6 17. Defendant **Tendenci Media LLC** (“Tendenci”) is a California limited
7 liability company with its principal place of business in Los Angeles, California.
8 Tendenci transacts or has transacted business in this District and throughout the
9 United States.

10 18. Defendant **Sarah Ann Brekke** (“Brekke”) is the owner and sole
11 member of Tendenci. At all times material to this complaint, acting alone or in
12 concert with others, Brekke formulated, directed, controlled, had the authority to
13 control, or participated in the acts and practices of Tendenci. Defendant Brekke
14 resides in this District and, in connection with the matters alleged herein, transacts
15 or has transacted business in this District and throughout the United States.

16 19. Defendant **Mindkontrol Industries LLC** (“Mindkontrol”) is a
17 California limited liability company with its principal place of business in San
18 Francisco, California. Mindkontrol transacts or has transacted business in this
19 District and throughout the United States.

20 20. Defendant **Christopher Thomas DeNovellis** (“DeNovellis”) is the
21 owner and sole member of Mindkontrol. At all times material to this complaint,
22 acting alone or in concert with others, DeNovellis formulated, directed, controlled,
23 had the authority to control, or participated in the acts and practices of
24 Mindkontrol. DeNovellis resides in the Northern District of California, and, in
25 connection with the matters alleged herein, transacts or has transacted business in
26 this District and throughout the United States.

27 21. Defendant **Anacapa Media LLC** (“Anacapa”) is a California limited
28 liability company with its principal place of business in Los Angeles, California.

1 Anacapa transacts or has transacted business in this District and throughout the
2 United States.

3 22. Defendant **Wayne Calvin Byrd II** (“Byrd”) is the owner and sole
4 member of Anacapa. At all times material to this complaint, acting alone or in
5 concert with others, Byrd formulated, directed, controlled, had the authority to
6 control, or participated in the acts and practices of Anacapa and Tendenci.
7 Defendant Byrd resides in this District and, in connection with the matters alleged
8 herein, transacts or has transacted business in this District and throughout the
9 United States.

10 23. Defendant **Bear Communications LLC** (“Bear”) is a California
11 limited liability company with its principal place of business in Los Angeles,
12 California. Bear transacts or has transacted business in this District and throughout
13 the United States.

14 24. Defendant **James Matthew Dawson** (“Dawson”) is the owner and
15 sole member of Bear. At all times material to this complaint, acting alone or in
16 concert with others, Dawson formulated, directed, controlled, had the authority to
17 control, or participated in the acts and practices of Bear. Dawson resides in this
18 District and, in connection with the matters alleged herein, transacts or has
19 transacted business in this District and throughout the United States.

20 25. Defendant **Network One Commerce Inc.** (“Network One”) is a
21 Nevada corporation with its principal place of business in San Diego, California.
22 Network One transacts or has transacted business in this District and throughout
23 the United States.

24 26. Defendant **Casey Lee Adkisson** (“Adkisson”) is the sole owner and
25 officer of Network One. At all times material to this complaint, acting alone or in
26 concert with others, Adkisson formulated, directed, controlled, had the authority to
27 control, or participated in the acts and practices of Network One and Tendenci.
28 Adkisson resides in this District and, in connection with the matters alleged herein,

1 transacts or has transacted business in this District and throughout the United
2 States.

3 **COMMON ENTERPRISE**

4 27. At all times material to this Complaint, Defendants Erdi
5 Development, MDK, Tendenci, and Anacapa (the “Common Enterprise
6 Defendants”) have operated as a common enterprise while engaging in the
7 unlawful acts and practices alleged herein. The Common Enterprise Defendants
8 have conducted the business practices described herein through interrelated
9 companies that have common ownership, managers, business functions,
10 employees, and office locations, and that commingled funds. Because the
11 Common Enterprise Defendants have operated as a common enterprise, each of
12 them is jointly and severally liable for the acts and practices alleged herein.
13 Individual Defendant Eromo has formulated, directed, controlled, had the authority
14 to control, or participated in the acts and practices of the Common Enterprise
15 Defendants.

16 **COMMERCE**

17 28. At all times material to this Complaint, Defendants have maintained a
18 substantial course of trade in or affecting commerce, as “commerce” is defined in
19 Section 4 of the FTC Act, 15 U.S.C. § 44.

20 **DEFENDANTS’ ACTIVITIES**

21 29. Since at least 2012, Defendants Eromo, Wedd, Thompson, and
22 Pajaczkowski, individually and through the corporate entities Erdi Development,
23 Phwoar, Ocean Tactics, Concise Consulting, and MMJX (the “Control
24 Defendants”) have engaged in a scam in which they, with Defendants MDK,
25 Tendenci, Mindkontrol, Anacapa, Bear, Network One, and their principals Kebede,
26 Brekke, DeNovellis, Byrd, Dawson, and Adkisson (the “Content Provider
27 Defendants”) have “crammed” unauthorized charges onto consumers’ mobile
28 phone bills. Many consumers have paid their mobile phone bills without ever

1 noticing these charges; others have paid and then unsuccessfully disputed the third-
2 party charges without obtaining a refund; still others have disputed the charges and
3 succeeded in having them removed only after substantial effort. The Control
4 Defendants and Content Provider Defendants (collectively, “Defendants”) have
5 been substantially and unjustly enriched by engaging in these deceptive and unfair
6 acts and practices.

7 **The Placement of Third-Party Charges on Mobile Phone Bills**

8 30. Text messages that are sent as “Premium SMS” texts are billed to the
9 recipient at a higher rate than the standard text message charge (also known as
10 “Short Message Service” or “SMS”) and/or are sent as part of a subscription to a
11 service for which there is a recurring monthly charge. A number of wireless phone
12 carriers have allowed third-party merchants, called “content providers,” to use the
13 carriers’ Premium SMS text message and billing infrastructures to deliver digital
14 goods or services (e.g., daily horoscopes or romance tips) to their customers’
15 mobile phones, and to collect payment for these goods and services through their
16 customers’ mobile phone bills.

17 31. To access a wireless phone carrier’s Premium SMS text message and
18 billing infrastructure, a content provider must first obtain authorization from the
19 wireless phone carrier to bill consumers for a specific good or service (often
20 referred to as a “program”) under a five- or six-digit number called a “short code.”
21 Taken together, the short code and program are referred to as the content
22 provider’s “short code campaign.” The wireless phone carrier allows content
23 providers to bill consumers on its Premium SMS billing platform through these
24 short code campaigns. This arrangement is facilitated through a third-party
25 intermediary known as an “aggregator.”

26 32. Even under standard industry practice, a content provider must at a
27 minimum show that the consumer has taken two affirmative steps to confirm the
28 consumer’s intention to purchase the content provider’s digital good or service, a

1 practice known as “double opt-in” verification, as evidence of consent to be billed.
2 For example, a consumer who visits a content provider’s web page advertisement
3 and wants to subscribe to the content provider’s program may initiate the
4 subscription process by entering his or her mobile phone number on that web page
5 advertisement. The content provider then sends to the consumer’s mobile phone a
6 text message which includes a description of the good or service, a four-digit
7 personal identification number, and instructions how to complete the opt-in
8 process. The second opt-in step occurs when the consumer enters the personal
9 identification number back into the same website to confirm his or her intent to
10 subscribe to the content provider’s program. This second opt-in step activates the
11 consumer’s subscription. The content provider then sends a text message to the
12 consumer to confirm the subscription activation.

13 33. The content provider sends to the aggregator the mobile phone
14 numbers that it has authorization to bill. The aggregator then determines which
15 wireless carrier is associated with each consumer’s mobile phone number and
16 submits the Premium SMS charges to the appropriate wireless phone carrier for
17 placement on the consumer’s mobile phone bill. The consumer pays the wireless
18 phone carrier for the Premium SMS charges as part of his or her overall mobile
19 phone bill. The wireless phone carrier sends a portion of this money (net of its fees
20 and any refunds the carrier has made to consumers) to the aggregator. The
21 aggregator then transmits a portion of the money (net of its fees and any refunds
22 the aggregator has made to consumers) to the content provider.

23 **Defendants’ Cramming of Unauthorized Charges**
24 **onto Consumers’ Mobile Phone Bills**

25 34. The programs that Defendants purportedly sell to consumers consist
26 of subscriptions for periodic text messages sent to consumers’ mobile phones that
27 contain entertainment texts such as short celebrity gossip alerts, “fun facts,” and
28 horoscopes. Each of Defendants’ subscriptions typically costs \$9.99 or \$14.99 per

1 month and is set to renew automatically every month. Defendants have billed
2 consumers for these programs on the Premium SMS billing platforms of a number
3 of wireless phone carriers.

4 35. Unlike legitimate content providers, Defendants have placed charges
5 for these services on consumers' mobile phone bills without obtaining the
6 consumers' informed consent.

7 36. Defendants cram charges on consumers' mobile phone bills in at least
8 two ways. For some consumers, Defendants obtain consumers' mobile phone
9 numbers through deceptive website offers that lead consumers to believe they are
10 entering their mobile phone numbers and other personal information onto the
11 website in order to receive a "freebie" such as a gift card or discount coupon.
12 These "freebies" include a \$1,000 Walmart gift card from
13 <http://walmart.rewardhubzone.com> and a \$500 Target gift card from
14 <http://target4.net>, as well as coupons and other items from websites such as
15 <http://www.grandsavingscenter.com>, <http://free-coupons-everyday.com>,
16 <http://retailbrandprize.com>, <http://www.onlinegiftrewards.com>,
17 <http://www.consumergiftspot.com>, <http://bestbuyraffle.com>,
18 <http://www.freegasfairy.com>, and <http://iphone5.newrewardsdaily.com>.

19 37. Other consumers are billed by Defendants without having had any
20 prior contact with Defendants. In these instances, Defendants begin sending to the
21 consumers' mobile phones unsolicited text messages that many consumers assume
22 have been sent in error. Defendants begin cramming charges on consumers'
23 mobile phone bills contemporaneous with the sending of these unsolicited text
24 messages.

25 38. Regardless of the mechanism Defendants use to obtain consumers'
26 mobile phone numbers, Defendants misrepresent to wireless phone carriers that
27 consumers to whom they have sent unsolicited text messages have knowingly
28

1 subscribed to Defendants' text message subscription service and authorized the
2 placement of Premium SMS charges on their phone bills.

3 39. These billing practices have harmed consumers. The monthly charges
4 for these subscriptions are often difficult to find in the consumer's mobile phone
5 bill and listed in an abbreviated and confusing form. Many consumers do not
6 notice Defendants' charges included on their bills and pay their bills in full, thus
7 paying the unauthorized charge without realizing it. Further, the charges recur
8 unless and until the consumer takes action to unsubscribe.

9 40. Those consumers who notice and contest the unauthorized charges
10 have also been harmed. Consumers report that the process of disputing these
11 charges is frustrating and time-consuming. Some consumers have been crammed
12 for multiple months before noticing the charges and, even after significant effort,
13 are unable to obtain a full refund.

14 41. Wireless phone carriers have suspended or terminated a number of
15 Defendants' short codes because of these billing practices.

16 42. Despite these sanctions, Defendants have maintained their access to
17 these wireless phone carriers' Premium SMS billing platforms and have continued
18 to place charges on consumers' mobile phone bills. Defendants have
19 accomplished this by, among other things, providing false information to the
20 wireless phone carriers and operating under different names.

21 **Defendants' Participation and Control**

22 43. At all times relevant to this Complaint, Control Defendants Eromo,
23 Thompson, Wedd, and Pajaczkowski were executives at Mobile Messenger, an
24 aggregator that served as the middleman between the wireless phone carriers and
25 Content Provider Defendants. As Mobile Messenger executives, they were
26 responsible for managing the relationship between the Content Provider
27 Defendants and the wireless phone carriers. They purported to ensure that the
28 charges that the content providers placed on consumers' mobile phone bills were

1 legitimate and to investigate and correct any problems that the wireless phone
2 carriers detected in the content providers' practices.

3 44. Control Defendants Eromo and Thompson recruited content
4 providers—including Defendants MDK, Tendenci, Mindkontrol, Anacapa, Bear,
5 and Network One, and their principals Defendants Kebede, Brekke, DeNovellis,
6 Byrd, Dawson, and Adkisson—to run short code campaigns through the wireless
7 phone carriers' billing platforms and place charges on consumers' mobile phone
8 bills without obtaining consumers' informed consent.

9 45. Control Defendant Eromo has served as Director of Account
10 Management, Vice President of Sales and Client Services, and Senior Vice
11 President of Sales with the Content Provider Defendants' aggregator, Mobile
12 Messenger. Eromo, individually and doing business as Erdi Development, enabled
13 the Content Provider Defendants to continue cramming while avoiding being
14 suspended or terminated by the wireless phone carriers.

15 46. Eromo directed, managed, and/or participated in the management of
16 the short code campaigns of MDK, Tendenci, Mindkontrol, Anacapa, Bear, and
17 Network One, as well as directed and/or participated in the other acts and practices
18 set forth in this Complaint. Eromo personally recruited other Defendants
19 (including MDK, Kebede, Tendenci, Anacapa, Brekke, Byrd, Bear, Dawson,
20 Network One, and Adkisson) to operate as content providers. He directed others to
21 form, and/or participated in the formation of, Defendants MDK, Tendenci,
22 Anacapa, and Bear as corporate entities. Eromo directed and/or participated in the
23 setting up and managing of the bank accounts, domain names, and websites of Erdi
24 Development, MDK, Tendenci, Anacapa, Mindkontrol, Bear, and Network One.
25 He served as sole signatory on and managed the bank accounts of Erdi
26 Development, which he used to receive funds from the Content Provider
27 Defendants. He also initiated, or directed others to initiate, wire transfer
28 transactions to and from MDK's, Tendenci's, and Anacapa's bank accounts.

1 47. Through MDK and Concise Consulting as pass-through entities,
2 Eromo, through his company Erdi Development, has received over \$17 million of
3 the revenues that the Content Provider Defendants have received from Mobile
4 Messenger. Defendant Eromo personally and substantially profited as a financial
5 stakeholder and/or participant in the Content Provider Defendants' deceptive and
6 unfair short code campaigns.

7 48. Control Defendant Thompson served as Mobile Messenger's Senior
8 Vice President, Strategic Operations. Thompson, individually and doing business
9 as Ocean Tactics, enabled the Content Provider Defendants to continue cramming
10 while avoiding being suspended or terminated by the wireless phone carriers.
11 Thompson personally recruited other Defendants (including Mindkontrol and
12 DeNovellis) to operate as content providers. He directed, managed, and/or
13 participated in the management of the short code campaigns of MDK, Tendenci,
14 Mindkontrol, Anacapa, Bear, and Network One, as well as directed and/or
15 participated in the other acts and practices set forth in this Complaint. Through
16 MDK and Erdi Development as pass-through entities, Thompson's company
17 Ocean Tactics has received over \$9 million of the revenues that the Content
18 Provider Defendants received from Mobile Messenger. Defendant Thompson
19 personally and substantially profited as a financial stakeholder and/or participant in
20 the Content Provider Defendants' deceptive and unfair short code campaigns.

21 49. Control Defendant Wedd has served as Mobile Messenger's Chief
22 Operating Officer and Chief Executive Officer. In this capacity, he was involved
23 in Mobile Messenger's communications with the wireless phone carriers, as well
24 as its communications with its content provider clients. Wedd, individually and
25 doing business as Phwoar, enabled the Content Provider Defendants to continue
26 cramming while avoiding being suspended or terminated by the wireless phone
27 carriers. Wedd directed, managed, and/or participated in the management of the
28 short code campaigns of MDK, Tendenci, Mindkontrol, Anacapa, Bear, and

1 Network One, as well as directed and/or participated in the other acts and practices
2 set forth in this Complaint. Through MDK, Erdi Development, and Concise
3 Consulting as pass-through entities, Wedd's company Phwoar has received over \$6
4 million of the revenues that the Content Provider Defendants received from Mobile
5 Messenger. Defendant Wedd personally and substantially profited as a financial
6 stakeholder and/or participant in the Content Provider Defendants' deceptive and
7 unfair short code campaigns.

8 50. Control Defendant Pajaczkowski served as Mobile Messenger's Vice
9 President of Compliance and Consumer Protection. In this capacity, he was
10 responsible for communicating with the wireless phone carriers, ensuring content
11 providers' compliance, and responding to consumer protection issues.

12 Pajaczkowski, individually and doing business as Concise Consulting and MMJX,
13 enabled the Content Provider Defendants to continue cramming while avoiding
14 being suspended or terminated by the wireless phone carriers. Pajaczkowski
15 directed, managed, and/or participated in the management of the short code
16 campaigns of MDK, Tendenci, Mindkontrol, Anacapa, Bear, and Network One.
17 Through MDK and Erdi Development as pass-through entities, as well as directly
18 from Tendenci, Pajaczkowski, through Concise Consulting and MMJX, has
19 received over \$9 million of the revenues that the Content Provider Defendants
20 received from the wireless phone carriers. Defendant Pajaczkowski personally and
21 substantially profited as a financial stakeholder and/or participant in the Content
22 Provider Defendants' deceptive and unfair short code campaigns.

23 51. Kebede incorporated MDK for the purpose of operating as a content
24 provider that would be controlled from behind the scenes by Control Defendant
25 Eromo. Kebede set up MDK's domain names and websites. Kebede set up and
26 managed MDK's bank accounts, which were used as a pass-through account for
27 funds flowing from the Content Provider Defendants to the Control Defendants.
28 Kebede established email accounts through which to conduct MDK business and

1 authorized others, including Control Defendant Eromo, to conduct the business of
2 MDK through those accounts by sending emails from MDK's email addresses on
3 MDK's behalf. Kebede went through the wireless carriers' "vetting" process to
4 run short code campaigns through the wireless carriers' billing platforms. Kebede
5 managed Tendenci's and Anacapa's bank accounts, initiating wire transfers from
6 those accounts to MDK, also in part for the purpose of funneling these funds to the
7 Control Defendants. In addition, Kebede managed and/or authorized others to
8 manage MDK's short code campaigns; and participated in the management of the
9 other Defendants' short code campaigns.

10 52. As a content provider, Defendant MDK began cramming charges in or
11 around 2010. It ran numerous short code campaigns under the names MDK, GMK
12 Communications, and SE Ventures, which have crammed charges on consumers'
13 mobile phone bills. These campaigns included "Quiz Alert" (on short code
14 60168), "Love Connection" and "Destiny Horoscope" (both on short code 64651),
15 "Special Secret Lover" (on short code 68514), and "My Phone Beatz" and "The
16 Stars Horoscopes" (both on short code 79597), all of which have crammed charges
17 on consumers' mobile phone bills. With the assistance of and in collaboration with
18 the Control Defendants, Kebede and MDK ran these campaigns on AT&T
19 Mobility LLC ("AT&T"), Sprint Spectrum, LP, also d/b/a Sprint PCS ("Sprint"),
20 T-Mobile USA, Inc. ("T-Mobile"), and Cellco Partnership also d/b/a Verizon
21 Wireless ("Verizon"). MDK was blacklisted by Verizon in October 2011, and by
22 AT&T in July 2012. Despite these terminations, MDK continued to cram charges
23 using similar short code campaigns on other wireless phone carriers' Premium
24 SMS billing platforms. MDK's short code campaigns generated over \$19 million
25 in revenues for MDK.

26 53. Content Provider Defendant Brekke incorporated, or authorized others
27 to incorporate, Content Provider Defendant Tendenci for the purpose of operating
28 as a content provider that would be controlled from behind the scenes by Control

1 Defendant Eromo. Brekke arranged for and managed, or authorized others to
2 arrange for and manage, Tendenci's mail drop and virtual office addresses. She
3 established, and/or authorized others to establish bank accounts for Tendenci. She
4 served as sole signatory on Tendenci's bank accounts and transferred funds from
5 Tendenci's bank accounts to MDK. Brekke went through the wireless carriers'
6 "vetting" process to run short code campaigns through the wireless carriers' billing
7 platforms. She authorized others to manage Tendenci's bank accounts, including
8 authorizing others to transfer funds from Tendenci's bank account to Defendants
9 MDK, Erdi Development, and Adkisson. She authorized others to conduct the
10 business of Tendenci, including the establishment of email accounts through which
11 to conduct Tendenci business, and she authorized others to send emails from
12 Tendenci's email addresses on Tendenci's behalf. She authorized others to register
13 and manage Tendenci's domain names and to manage Tendenci's websites, short
14 codes, and short code campaigns.

15 54. Content Provider Defendant Tendenci began cramming charges in or
16 around March 2012. Content Provider Defendants Kebede, Byrd, Brekke, and
17 Adkisson directed and/or participated in Tendenci's fraudulent operations with the
18 assistance of, in collaboration with, and/or under the direction of, the Control
19 Defendants, running numerous short code campaigns including "My Phone Beatz"
20 and "Text Groove" (both on short code 25260), "Smart Mobile Quiz" (on short
21 code 70890), and "Texting Tips" (on short code 83016) on at least T-Mobile,
22 Sprint, and Verizon. All of these campaigns have crammed charges on consumers'
23 mobile phone bills. Verizon blacklisted Tendenci in July 2012. Despite this
24 termination, Tendenci, with the assistance of and in collaboration with the Control
25 Defendants, continued to cram charges using similar short code campaigns on
26 other wireless phone carriers' Premium SMS billing platforms. These short code
27 campaigns generated over \$5 million in revenues for Tendenci.
28

1 55. DeNovellis operated Mindkontrol as a content provider selling digital
2 entertainment content. DeNovellis formed Mindkontrol as a corporate entity, set
3 up and managed its bank accounts, went through the wireless carriers' "vetting"
4 process to run short code campaigns through the wireless carriers' billing
5 platforms, and managed or authorized others to manage its short codes and short
6 code campaigns. He underwent a "vetting" process, representing to the wireless
7 carriers that he was the owner and operator of Mindkontrol.

8 56. Content Provider Defendant Mindkontrol began cramming charges in
9 or around July 2012. Content Provider Defendant DeNovellis directed and
10 participated in Mindkontrol's fraudulent operations and, with the assistance of, in
11 collaboration with, and/or under the direction of, the Control Defendants, ran at
12 least two short code campaigns on T-Mobile, Sprint, and AT&T, that crammed
13 charges onto consumers' mobile phone bills. These campaigns included
14 "MyEcoPortal and "YourTrueFateHoroscopes" (both on short code 71573). These
15 short code campaigns generated over \$11 million in revenues for Mindkontrol.

16 57. Content Provider Defendant Byrd incorporated Content Provider
17 Defendants Tendenci and Anacapa for the purpose of operating as content
18 providers that would be controlled from behind the scenes by Control Defendant
19 Eromo. Byrd applied for and obtained mail drop and virtual office addresses for
20 Anacapa and Tendenci. He set up bank accounts for Anacapa and Tendenci, and
21 authorized Control Defendant Eromo to manage those accounts. He registered
22 domain names for Anacapa and Tendenci, and managed and/or authorized others,
23 including the Control Defendants, to manage Anacapa's and Tendenci's websites,
24 short codes, and short code campaigns. He conducted the business of Anacapa,
25 including establishing email accounts through which to conduct Anacapa business
26 and authorizing others to send emails from Anacapa's email addresses on
27 Anacapa's behalf. Byrd went through the wireless carriers' "vetting" process to
28 run short code campaigns through the wireless carriers' billing platforms.

1 58. Content Provider Defendant Anacapa began cramming charges in or
2 around July 2012. Content Provider Defendants Byrd and Kebede directed and
3 participated in Anacapa's fraudulent operations and, with the assistance of, in
4 collaboration with, and/or under the direction of, the Control Defendants, ran at
5 least five short code campaigns on T-Mobile, AT&T, and Sprint. These campaigns
6 included "Mobile Tune Club" (on short code 65815), "Love Match Score" (on
7 short code 54480), and "My Mobile Nine" and "My Cosmic Sign" (both on short
8 code 84653), all of which have crammed charges on consumers' mobile phone
9 bills. These short code campaigns generated over \$22 million in revenues for
10 Anacapa.

11 59. Content Provider Defendant Dawson formed Content Provider
12 Defendant Bear as a vehicle through which to earn "passive income" acting as a
13 conduit for service providers that would use short codes owned by Bear to sell
14 their services. At the direction of Control Defendant Eromo and others, Dawson
15 formed Bear as a corporate entity, set up a virtual office mailing address for Bear,
16 set up a bank account for Bear, and registered a website domain name for Bear.
17 Dawson managed or authorized others to manage Bear's domain name, short
18 codes, and short code campaigns. Dawson went through the wireless carriers'
19 "vetting" process to run short code campaigns through the wireless carriers' billing
20 platforms.

21 60. Content Provider Defendant Bear began cramming charges in or
22 around October 2012. Content Provider Defendants Dawson and Kebede directed
23 and participated in Bear's fraudulent operations and, with the assistance of, in
24 collaboration with, and/or under the direction of the Control Defendants, running at
25 least three short code campaigns on Sprint and Verizon. These campaigns
26 included "Tons of Mobile" (on short code 21446), "Horoscopes Now" and "Ur
27 Astrology" (both on short code 27460), and "Text Fun 4 Phone" (on short code
28 95899), all of which have crammed charges on consumers' mobile phone bills.

1 Verizon temporarily suspended Bear's billing privileges in January 2013. Despite
2 this, Bear, with the assistance of, in collaboration with, and/or under the direction
3 of the Control Defendants, continued to cram charges using similar short code
4 campaigns on Sprint's Premium SMS billing platform. These short code
5 campaigns generated over \$4 million in revenues for Bear.

6 61. Content Provider Defendant Adkisson operated Content Provider
7 Defendant Network One as a vehicle through which to earn "passive income" by
8 using Network One's bank account to receive wire transfers from Mobile
9 Messenger and send wire transfers to MDK. Adkisson formed Network One as a
10 corporate entity, set up a mail drop address and bank accounts for Network One,
11 and managed or authorized others to manage its short codes and short code
12 campaigns. Adkisson went through the wireless carriers' "vetting" process to run
13 short code campaigns through the wireless carriers' billing platforms. Through his
14 company Dormart LLC, Adkisson also sold three short codes to Tendenci.

15 62. Content Provider Defendant Network One began cramming charges in
16 or around May 2013. Content Provider Defendant Adkisson directed and
17 participated in Network One's fraudulent operations and, with the assistance of, in
18 collaboration with, and/or under the direction of, the Control Defendants, ran at
19 least one short code campaign, "Find Loves Match" (on short code 74881), on
20 Sprint. This campaign crammed charges on consumers' mobile phone bills.
21 Network One's short code campaigns generated over \$1 million in revenues for
22 Network One.

23 63. The Content Provider Defendants generated substantial revenues from
24 their cramming activities and forwarded to MDK a substantial portion—typically
25 90 to 96%—of the revenues they received from their aggregator. At Control
26 Defendant Eromo's direction and with authorization of Content Provider
27 Defendants MDK and Kebede, MDK then forwarded a substantial portion of what
28 it received from the other Content Provider Defendants to Control Defendant

1 Eromo through his company, Control Defendant Erdi Development, and to Control
2 Defendant Pajaczkowski through two companies under his control, Concise
3 Consulting and MMJX. Erdi Development and Concise Consulting then
4 distributed a portion of those proceeds to Control Defendants Wedd through
5 Phwoar, a company under his control, and Thompson through his company Ocean
6 Tactics. The Control Defendants have made millions of dollars from these
7 deceptive and unfair business practices.

8 64. Kebede, DeNovellis, Byrd, Dawson, and Adkisson retained a portion
9 of the money that MDK, Tendenci, Mindkontrol, Anacapa, Bear, and Network One
10 received from Mobile Messenger as compensation for their role in the scheme.
11 Kebede kept at least \$383,000 of the revenues that MDK received from other
12 Content Provider Defendants and Mobile Messenger. DeNovellis kept at least
13 \$570,000 of the revenues that Mindkontrol received from Mobile Messenger.
14 Byrd kept at least \$200,000 of the revenues that Anacapa and Tendenci received
15 from Mobile Messenger. Dawson kept at least \$130,000 of the revenues that Bear
16 received from Mobile Messenger. Adkisson kept at least \$45,000 of the revenues
17 that Network One received from Mobile Messenger, as well as additional revenues
18 from selling short codes to Tendenci.

19 VIOLATIONS OF THE FTC ACT

20 65. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or
21 deceptive acts or practices in or affecting commerce.” Misrepresentations or
22 deceptive omissions of material fact constitute deceptive acts or practices
23 prohibited by Section 5(a) of the FTC Act.

24 66. Acts or practices are unfair under Section 5 of the FTC Act if they
25 cause substantial injury to consumers that consumers cannot reasonably avoid
26 themselves and that is not outweighed by countervailing benefits to consumers or
27 competition. 15 U.S.C. § 45(n).
28

1 **COUNT I**

2 **Deceptive Acts and Practices in Violation of Section 5 of the FTC Act**

3 67. In numerous instances in connection with the sale of Premium SMS
4 services, Defendants have represented, directly or indirectly, expressly or by
5 implication, that consumers are obligated to pay for charges for Defendants'
6 Premium SMS services appearing on consumers' mobile phone bills.

7 68. In truth and in fact, in numerous instances in which Defendants have
8 made the representations set forth in Paragraph 67 of this Complaint, consumers
9 were not obligated to pay the charges because the consumers did not authorize
10 charges for Defendants' services corresponding to the charges on the bill.

11 69. Therefore, Defendants' representations as set forth in Paragraph 67 of
12 this Complaint are false or misleading and constitute deceptive acts or practices in
13 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

14 **COUNT II**

15 **Unfair Billing Practices in Violation of Section 5 of the FTC Act**

16 70. In numerous instances, Defendants have caused consumers' telephone
17 accounts to be billed without having previously obtained the consumers' express
18 informed consent.

19 71. Defendants' actions have caused or are likely to cause substantial
20 injury to consumers that consumers cannot reasonably avoid themselves and that is
21 not outweighed by countervailing benefits to consumers or competition.

22 72. Therefore, Defendants' practices as set forth in Paragraph 70
23 constitute unfair acts or practices in violation of Section 5 of the FTC Act,
24 15 U.S.C. § 45(a) and (n).

25 **CONSUMER INJURY**

26 73. Consumers have suffered and will continue to suffer substantial injury
27 as a result of Defendants' violations of the FTC Act. In addition, Defendants have
28 been unjustly enriched as a result of their unlawful acts or practices. Absent

1 injunctive relief by this Court, Defendants are likely to injure consumers, reap
2 unjust enrichment, and harm the public interest.

3 **THIS COURT’S POWER TO GRANT RELIEF**

4 74. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
5 to grant injunctive and other such relief as the Court may deem appropriate to halt
6 and redress violations of any provision of law enforced by the FTC. The Court, in
7 the exercise of its equitable jurisdiction, may award ancillary relief, including
8 rescission or reformation of contracts, restitution, the refund of monies paid, and
9 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any
10 provision of law enforced by the FTC.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, § 53(b),
13 and the Court’s own equitable powers, requests that the Court:

14 A. Award such preliminary and ancillary relief as may be necessary to
15 avert the likelihood of consumer injury during the pendency of this action and to
16 preserve the possibility of effective final relief, including, but not limited to, a
17 temporary and preliminary injunction, asset freeze, appointment of a receiver, an
18 evidence preservation order, and expedited discovery;

19 B. Enter a permanent injunction to prevent future violations of the FTC
20 Act by Defendants;

21 C. Award such relief as the Court finds necessary to redress injury to
22 consumers resulting from Defendants’ violations of the FTC Act, including, but
23 not limited to, rescission and reformation of contracts, restitution, the refund of
24 monies paid, and the disgorgement of ill-gotten monies;

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1 D. Award Plaintiff the costs of bringing this action, as well as such other
2 and additional relief as the Court may determine to be just and proper.

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Dated: October 6, 2014

Respectfully submitted,
David C. Shonka
Acting General Counsel
/s/ Faye Chen Barnouw
Faye Chen Barnouw
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