

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

2012 APR 27 P 2:53
CLERK'S OFFICE
AT BALTIMORE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

GREEN MILLIONAIRE, LLC, *et al.*,

Defendants.

BY _____ DEPUTY
Case No. 1:12-cv-01102-BEL

**(Proposed) ORDER ENTERING
STIPULATED PERMANENT
INJUNCTION AGAINST GREEN
MILLIONAIRE, LLC, SYNDERO,
INC., SCOTT WALTZ, AND NIGEL
WILLIAMS**

THIS MATTER is before the Court upon the Joint Motion for Entry of Stipulated Permanent Injunction, filed April 12, 2012.

On April 11, 2012, Plaintiff Federal Trade Commission ("FTC" or "Commission") filed a Complaint for a Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission and Defendants stipulate to the entry of this Order against Green Millionaire, LLC, Syndero, Inc., Scott Waltz, and Nigel Williams ("Order") to resolve the Complaint filed in this action.

The Court, having reviewed the Motion and being advised fully in the premises, hereby ORDERS and ADJUDGES as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the parties.
2. Venue is proper as to all parties in this District.

3. Defendants' activities are "in or affecting commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint states claims upon which relief may be granted against Defendants, under Section 5 the FTC Act, 15 U.S.C. § 45.
5. Plaintiff and Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.
6. Defendants waive any claim that they may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorneys' fees.
7. Except as otherwise provided in Section VIII.J, this Order is for settlement purposes only and does not constitute and shall not be interpreted to constitute an admission by Defendants or a finding that the law has been violated as alleged in the Commission's Complaint or that the facts alleged in the Commission's Complaint, other than jurisdictional facts, are true. This Order resolves the allegations set forth in the Commission's Complaint.

DEFINITIONS

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

1. "Billing Information" means any data that enables any person to access a customer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.
2. "Clear and Conspicuous" or "Clearly and Conspicuously" means:
 - a. In textual communications (*e.g.*, printed publications or words displayed on the screen of an electronic device), the disclosure shall be of a type size and location sufficiently

noticeable for an ordinary consumer to read and comprehend the disclosure, in print that contrasts with the background on which it appears;

- b. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend the disclosure;
- c. In communications disseminated through video means (*e.g.*, television or streaming video), the disclosure shall be in writing in a form consistent with Subsection a of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend the disclosure;
- d. In communications made through the Internet and other web-based applications or services:
 - i. The disclosure shall be unavoidable and presented in a form consistent with Subsection a of this definition in addition to any audio or video presentation of it; and
 - ii. The disclosure shall be on the same webpage, online service page, or other electronic page, in close proximity to the triggering representation, and viewable without requiring the consumer to scroll up, down, or sideways, or otherwise adjust their browser or device window in any way. Representations and disclosures that are accessed or displayed through hyperlinks, pop-ups, interstitials, or similar means are not “in close proximity”;
- e. In communications that contain both audio and visual portions, the disclosure shall be presented simultaneously in both the audio and visual portions of the communication.
Provided however, that in any communication disseminated solely through visual or

audio means, the disclosure may be made through the same means in which the communication is presented;

- f. In all instances, the disclosure shall be presented prior to the consumer's incurring any financial obligation, in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.
3. "Corporate Defendants" means Syndero, Inc., and Green Millionaire, LLC, and their successors and assigns.
4. "Defendants" means the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.
5. "Endorsement" means any advertising message (including verbal statements, written statements, quotations or summaries of statements, demonstrations, or depictions of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the Defendants, even if the views expressed by that party are identical to those of the Defendants.
6. "Individual Defendants" means Scott Waltz and Nigel Williams.
7. "Negative Option Feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller or provider as acceptance of the offer. Offers or agreements with negative option features include, but are not limited to: (i) free or introductory price trial offers in which the consumer receives a good, product, program, or service for free or at a nominal or introductory price for an initial period

and will incur an obligation to pay or pay a greater amount for the good, product, program, or service if the consumer does not take affirmative action to cancel, reject, or return the good, product, program, or service before the end of that period; (ii) continuity plans in which, subsequent to the consumer's agreement to the plan, the seller or provider automatically ships products to a consumer unless the consumer notifies the seller or provider within a certain time not to ship the products; and (iii) automatic renewal plans in which the seller or provider automatically renews the agreement and charges the consumer unless the consumer cancels before the renewal; provided, however, that the fact that payments under a contract will be made in installments does not by itself mean that an agreement has a negative option feature.

8. "Plaintiff" or "Commission" or "FTC" means the Federal Trade Commission.

I.

PROHIBITION ON MISREPRESENTATIONS - NEGATIVE OPTION PROGRAMS

IT IS THEREFORE ORDERED that Defendants, their officers, agents, servants, contractors, and employees and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, in connection with the advertising, marketing, offering for sale, or sale of any goods, products, programs, or services by means of a negative option feature, are hereby permanently restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. That a good, product, program, or service is offered on a "free," "trial," "no obligation," or "discounted" basis, or words of similar import, denoting or implying the absence of an obligation on the part of the recipient of the offer to affirmatively act in order to avoid a

charge, including where a charge will be assessed pursuant to the offer unless the consumer takes affirmative action to cancel;

- B. The purpose for which a consumer's payment information will be used;
- C. The amount that a consumer will be charged or billed;
- D. That a consumer will not be charged or billed;
- E. The timing or manner of any charge or bill (including but not limited to the date of the charge and whether it will be a credit card charge or a checking account debit);
- F. The length of any trial period before the consumer is charged or billed;
- G. That a consumer purchased or agreed to purchase a good, product, program, or service;
- H. That a transaction has been authorized by a consumer;
- I. That a consumer will not be charged or billed without the consumer's authorization; and
- J. The material terms and conditions of any policies and practices regarding cancellations and refunds.

II. EXPRESS INFORMED CONSENT

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, contractors, and employees and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, in connection with the advertising, marketing, offering for sale, or sale of any goods, products, programs, or services, are hereby permanently restrained and enjoined from directly or indirectly using billing information to obtain payment from a consumer, unless, prior to using such billing information to obtain payment, Defendants obtain the express informed consent of the consumer, including by:

- A. Requesting that the consumer indicate assent to pay for the good, product, program, or service using a specified account;
- B. Disclosing clearly and conspicuously in relation to the request for the consumer's assent:
 - 1. A description of the good, product, program, or service being offered;
 - 2. The specific billing information to be used;
 - 3. All fees and costs, including shipping and handling or processing fees;
 - 4. The entity on whose behalf the payment will be assessed, if the entity is not clearly and conspicuously disclosed in the Defendants' advertisements;
 - 5. How the charge will appear on consumers' billing statements, if the billing statements do not contain the name of the entity or product on whose behalf the payment will be assessed;
 - 6. The amount of any subsequent charges and, if applicable, the dates or frequency of any subsequent charges, including renewals;
 - 7. All material restrictions, limitations, or conditions applicable to the purchase, receipt, or use of the good, product, program, or service that is the subject of the offer; and
 - 8. The steps that the consumer must take to cancel, or, if applicable, obtain a refund for, the good, product, program, or service that is the subject of the offer;
- C. Obtaining the consumer's affirmative assent to pay for the good, product, program, or service using the specified account. In connection with communications made through the Internet or other web-based applications or services, the consumer must indicate such assent by clicking on a button that is specifically labeled to convey such assent, or other substantially similar method; and

D. In connection with an offer or agreement with a negative option feature, express informed consent also shall consist of:

1. For all written offers (including over the Internet or other web-based applications or services): a check box, signature, or other substantially similar method, that consumers must affirmatively select or sign to accept the negative option feature. Immediately adjacent to such check box, signature, or substantially similar method, Defendants shall disclose all costs associated with the negative option feature, that the consumer is agreeing to pay such costs, the length of any trial period, and that consumers must cancel to avoid being charged. This disclosure shall contain no additional information and shall be clear and conspicuous in relation to any other information provided on the page related to costs, risks, or obligations associated with any negative option feature, including terms such as “free,” “discounted,” “risk free,” “no risk,” “trial,” or “no obligation.”
2. For all oral offers: a recording of the entire transaction, including the sales representations, evidencing the consumer’s agreement to the negative option feature. The recording must demonstrate that the consumer has provided billing information, such as the last four (4) digits of the account to be charged, specifically for the purpose of participating in the negative option feature and that the Defendants have disclosed to the consumer all costs associated with the negative option feature, that the consumer is agreeing to pay such costs, the length of any trial period, and that consumers must cancel to avoid being charged.

III.

REQUIRED DISCLOSURES

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, contractors, and employees and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, in connection with the advertising, marketing, offering for sale, or sale of any goods, products, programs, or services connected to a negative option feature shall:

- A. Send the consumer written confirmation of any transaction involving a service, no later than the lesser of ten days after the date of the transaction or half the time of any trial period, via first class mail, or electronic mail if the transaction is made over the Internet or other web-based applications or services, with its purpose identified in a clear and conspicuous manner on the outside of the envelope, or in the subject heading, that includes all the information that is required to be disclosed pursuant to Section II.B, above, and a clear and conspicuous statement of the procedures by which the consumer can cancel or obtain a refund;
- B. Send with the first shipment of any product delivered by mail, written confirmation of the transaction that includes all of the information that is required to be disclosed pursuant to Section II.B above, and a clear and conspicuous statement of the procedures by which the consumer can cancel or obtain a refund; and
- C. Send the consumer written confirmation of a renewal of a membership, subscription, or agreement whose term is six months or longer, at least thirty (30) days prior to renewing and prior to the submission for payment of a consumer's billing information for such membership, subscription, or agreement, via first class mail with its purpose identified in

a clear and conspicuous manner on the outside of the envelope, that includes all the information that is required to be disclosed pursuant to Section II.B, above, and a clear and conspicuous statement of the procedures by which the consumer can cancel such renewal.

**IV.
PROHIBITIONS CONCERNING REFUNDS AND CANCELLATIONS**

IT IS FURTHER ORDERED that Defendants and their officers, agents, servants, and employees, and those persons or entities 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 indirectly, in connection with the advertising, marketing, or offering for sale or sale of any goods, products, programs, or services, are permanently restrained and enjoined from:

- A. Failing to disclose, clearly and conspicuously, before a consumer consents to pay for the negative option feature:
 - 1. The material terms of any refund or cancellation policy; or
 - 2. If the policy is not to make refunds or allow cancellations, this policy;
- B. Failing to honor promptly a request that complies with any policy to make refunds or allow cancellations, including failing to terminate the consumer's enrollment in any plan or program with a negative option feature prior to the next billing cycle, provided that the consumer makes the request no later than one (1) business day prior to the next billing cycle, *provided, however*, that in the event Defendants cannot cancel the consumer's enrollment prior to the next billing cycle, Defendants shall refund the amount charged to the consumer for such billing cycle within the next billing cycle; and

- C. Failing to provide a no-cost mechanism for cancellation that is as simple to use and effective as the mechanism by which consumers purchase or enroll in Defendants' goods, products, programs, or services.

V.

PROHIBITION ON MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, contractors, and employees and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, are hereby permanently restrained and enjoined from making, or assisting others in making, expressly or by implication, in connection with the advertising, marketing, offering for sale, or sale of any goods, products, programs, or services, any misrepresentation, including that:

- A. Consumers can get free gas for life;
- B. Consumers can make their electricity meter go backwards, paying the consumer;
- C. Consumers can put solar panels on their roofs for free;

or any other misrepresentation about benefits, performance, efficacy, or safety of any of Defendants' goods, products, programs, or services.

VI.

PROHIBITION ON REPRESENTATIONS THROUGH ENDORSEMENTS AND TESTIMONIALS UNLESS TRUE AND SUBSTANTIATED

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, contractors, and employees and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, in connection with the advertising, marketing, offering for sale, or sale of any goods, products, programs,

or services are hereby permanently restrained and enjoined from representing, or assisting others in representing, in any manner, expressly or by implication:

- A. That consumer testimonials or dramatizations of consumer experiences accurately represent or reflect actual consumer experience with the good, product, program, or service, unless:
 - 1. Such representation is non-misleading; and
 - 2. At the time of making such representation, Defendants possess and rely upon competent and reliable evidence to substantiate that the consumers are actual users of the good, product, program, or service and that they obtained the represented benefits from use of the good, product, program, or service;
- B. That consumers who use the good, product, program, or service are likely to achieve the results represented by an endorser of such good, product, program, or service unless:
 - 1. Such representation is non-misleading; and
 - 2. At the time of making such representation, Defendants possess and rely upon competent and reliable evidence to substantiate that the representation is true;
- C. That such good, product, program, or service has been endorsed by any person, organization, or group that is an expert with respect to the endorsement message unless:
 - 1. The endorser is an existing person, organization, or group whose qualifications give it the expertise that the endorser is represented as having with respect to the endorsement; and
 - 2. The endorsement is substantiated by an objective and valid evaluation or test using procedures generally accepted by experts in the relevant science or profession to yield accurate and reliable results.

VII.
DISPOSITION OF PAST CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendants, their officers, agents, servants, contractors, and employees and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any entity, are permanently restrained and enjoined from:

- A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, Social Security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) that any Defendant obtained prior to entry of this Order in connection with the Green Millionaire Book; and
- B. Failing to dispose of, or sequester if preservation is required by a law, regulation, or court order, or necessary to defend against future potential litigation, such customer information in all forms in their possession, custody, or control within thirty (30) days after entry of this Order, except that the companies' database of consumers of the Green Millionaire Book must be preserved until consumer redress is complete or notice is provided by a Commission representative that the data may be destroyed. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

Provided, however, that customer information may be preserved and may be disclosed to the extent requested by a government agency or required by a law, regulation, or court order.

VIII.
MONETARY JUDGMENT AND MONETARY EQUITABLE RELIEF

IT IS FURTHER ORDERED that:

- A. Judgment in the amount of Five Million Seven Hundred Eighteen Thousand Eight Hundred Dollars (\$5,718,800) is entered against Defendants, jointly and severally, *provided, however*, that as to each Defendant, the judgment shall be suspended upon satisfaction of all terms applicable to each Defendant set forth in this Section;
- B. The Defendants are ordered to pay as follows:
1. Defendant Green Millionaire is ordered to pay to the Commission Twenty Thousand Dollars (\$20,000). Defendant Green Millionaire stipulates that, as of January 19, 2012, the \$20,000 has been held in escrow by its undersigned counsel for no purpose other than payment to the Commission pursuant to this Subsection. Payment of the \$20,000 shall be made within five (5) business days from the date of entry of this Order.
 2. Defendant Syndero is ordered to pay to the Commission Seven Hundred Thousand Dollars (\$700,000). Defendant Syndero stipulates that, as of December 12, 2011, \$500,000 has been held in escrow by its undersigned counsel for no purpose other than payment to the Commission pursuant to this Subsection. Payment of the \$500,000 shall be made within five (5) business days from the date of entry of this Order. The remaining \$200,000 shall be paid in increments of \$100,000 within thirty (30) and sixty (60) days, respectively, from the date of entry of this Order;

3. If, within 180 days from the date of entry of this Order, Defendant Syndero has received a refund from the State of California Board of Equalization arising from an investigation of an alleged overpayment of sales taxes by Syndero for the years 2008 through 2010 (State of California Board of Equalization, File No. SR BH 100-989886) (“Sales Tax Refund”), Defendant Syndero shall provide an accounting of, and pay to the Commission, an amount equal to the Sales Tax Refund. Such payment shall be made within five (5) business days of receiving the funds from the Sales Tax Refund. If the Sales Tax Refund is less than \$650,000, including if the State of California determines that Syndero is not entitled to receive a refund, Syndero shall also, within the earlier of sixty (60) days of receiving such Sales Tax Refund or 210 days from the date of entry of this Order, pay to the Commission the difference between the Sales Tax Refund and \$650,000;
4. If Syndero does not receive a Sales Tax Refund within 180 days from the date of entry of this Order, it shall, within thirty (30) days thereafter, pay the Commission \$650,000;
5. If, after 180 days from the date of entry of this Order, Syndero receives a Sales Tax Refund that is greater than \$650,000, Defendant Syndero shall provide an accounting of, and pay to the Commission, an amount equal to such Sales Tax Refund, less any payment under Subsection B.4. Such payment shall be made within five (5) business days of receiving the funds from the Sales Tax Refund;
6. If, after 180 days of entry of this Order, Syndero receives a Sales Tax Refund that is less than \$650,000, including if the State of California determines that Syndero

is not entitled to receive a refund, under no circumstances shall the Commission be obligated to refund Syndero any monies it has paid to the Commission pursuant to Subsections B.2 through B.4;

7. To secure its \$200,000 payment under Subsection B.2, and performance under Subsections B.2 through B.5, Defendant Syndero has provided the Commission with a security interest in, and liens on, its Inventory and right to receive the Sales Tax Refund, as set forth in the Security Agreement between Syndero and the Commission dated April 9, 2012 ("Security Agreement"), which is incorporated herein as if fully set forth verbatim. As of November 30, 2011, the value of Syndero's Inventory is sufficient to pay the amounts due the Commission;
8. If necessary, and to the extent required to effectuate the payments required under Subsections B.2 through B.5, Syndero shall liquidate its inventory, as set forth in the Security Agreement;
9. All payments to the Commission pursuant to Subsections B.1 through B.5 shall be made by electronic fund transfer in accordance with the instructions provided by a representative of the Commission;
10. Defendant Scott Waltz is ordered to pay to the Commission Six Hundred Thousand Dollars (\$600,000). Such payment shall be made within five (5) business days of entry of this Order by electronic fund transfer in accordance with the instructions provided by a representative of the Commission. Defendant Waltz stipulates that, as of January 20, 2012, the amount referred to in this Subsection has been held in escrow by his undersigned counsel for no purpose other than payment to the Commission;

11. Defendant Nigel Williams shall immediately take specific steps, as set forth below, to sell all interest in the 2005 BMW 645CI, VIN No. WBAEK734X5B328607 ("BMW"), listed on Defendant Williams' October 3, 2011, sworn financial statement that Defendant Williams reaffirmed and amended on January 18, 2012:
 - a. Defendant Williams shall immediately place the BMW for sale through an appropriate broker or automobile listing service;
 - b. Defendant Williams shall notify the Associate Director of the Division of Enforcement of the amount of any offer to purchase the BMW immediately upon receiving each such offer. Acceptance of any such offer shall be in the sole discretion of the Associate Director of the Division of Enforcement;
 - c. Within three (3) business days of receipt of net proceeds from the sale of all interest in the BMW, Defendant Williams shall cause to be wired to the Commission the net proceeds from the sale in accordance with the instructions provided by a representative of the Commission, and Defendant Williams shall identify the name and address of the purchaser of the BMW;
 - d. Defendant Williams agrees that, prior to the sale required by this Subsection, he will maintain insurance on the BMW in an amount of not less than the replacement value of the vehicle. In the event that the BMW suffers any loss or damage covered by such insurance policy, Defendant Williams shall make such claims as are permitted by the insurance policy

and shall assign or remit any insurance payment he receives as a result of such loss or damage to the Commission;

- e. Defendant Williams represents that no encumbrances to the BMW have been added since January 18, 2012, the date he reaffirmed and amended his October 3, 2011 sworn financial statement; and that he will not add any such encumbrances after signing this Order, except that, to secure his performance under this Subsection, Defendant Williams hereby grants to the Commission a lien on, and security interest in, the BMW, which terminates upon sale of the vehicle; and
 - f. If, after ninety (90) days from the date of entry of this Order, the BMW has not been sold, Defendant Williams shall immediately retain an auction company and direct it to sell the BMW at a public auction, provided that, Defendant Williams first obtains from the Associate Director of the Division of Enforcement written approval of the auction company and of the terms that Defendant Williams establishes for the auction, which approval shall not be unreasonably withheld. Defendant Williams shall bear any and all costs associated with the auction of the BMW;
12. Defendant Williams shall immediately take specific steps, as set forth below, to sell all interest in the real property located in Fresno County, California, Parcel ID 190-390-35, an improved parcel of land including a mobile home, and Parcel ID 190-360-50, an unimproved parcel of land (collectively "the Properties"), listed on Defendant Williams' sworn financial statement dated October 3, 2011, which Defendant Williams reaffirmed and amended on January 18, 2012:

- a. Defendant Williams shall sell the Properties upon terms and conditions acceptable to the FTC. Defendant Williams shall promptly comply with all steps necessary to effectuate the sales, including, but not limited to, signing listing contracts with real estate agents, keeping the Properties in good repair, keeping the Properties in conditions suitable for showing to prospective purchasers, signing contracts for the sale of the Properties, signing all documents necessary or appropriate for the transfer of the Properties to new buyers, and any reasonable requests from the FTC related to those sales;
- b. Defendant Williams shall notify the Associate Director of the Division of Enforcement of the amount of any offer to purchase the Properties immediately upon receiving each such offer. Acceptance of any such offer shall be in the sole discretion of the Associate Director of the Division of Enforcement;
- c. If, after nine (9) months from the date of entry of this Order, all interests in the Properties have not been sold, Defendant Williams shall immediately retain an auction company, and direct such auction company to sell all remaining interests in the Properties at a public auction, provided that, Defendant Williams first obtains from the Associate Director of the Division of Enforcement written approval of the auction company and of the terms that Defendant Williams establishes for the auction, which approval shall not be unreasonably withheld. Defendant

Williams shall bear any and all costs associated with the auction of the Properties;

- d. All net proceeds shall be paid to the FTC within ten (10) days of the sale or auction of each property. Any sheriff, title company, or other person involved in such a sale or auction may rely on this Order as authority to deliver the net proceeds to the FTC;
- e. To secure his performance under this Section, Defendant Williams hereby grants to the Commission liens on, and security interests in, the Properties. Defendant Williams represents and acknowledges that the Commission is relying on the material representations that Defendant Williams and Myra Ferrie, his wife, are the sole owners of the Properties, that the Properties are not encumbered by any mortgages or liens, and that he will not add any such encumbrances after signing this Order;
- f. Defendant Williams expressly agrees that neither of the Properties are homestead properties;
- g. As long as either of the Properties are owned by Defendant Williams and his wife, Myra Ferrie, they shall maintain, and take no action to diminish the value of, the Properties, including any structures, fixtures, and appurtenances thereto, in good working order and in the same condition as of January 18, 2012, which is the date Defendant Williams reaffirmed and amended his October 3, 2011, sworn financial statement;
- h. Until Defendant Williams transfers the proceeds of the sale of the Properties to the FTC, he shall remain current on all amounts due and

payable on the Properties, including but not limited to tax, insurance, homeowner's assessments, reasonable and necessary maintenance, and similar fees. Defendant Williams shall cause existing insurance coverage for the Properties to remain in force until the transfer of ownership; and

- i. Myra Ferrie, the wife of Defendant Williams, consents to the sale of the Properties, and agrees to prepare, execute, and record the necessary documents to effectuate such sale, and waives any rights she may have to the proceeds from the sale of the Properties under applicable community property laws;

13. Defendant Williams shall cooperate fully with the Commission and be responsible for preparing, executing, and recording the necessary documents and doing whatever else the Commission deems necessary or desirable to perfect and evidence its liens on and security interests in the BMW and the Properties. Defendant Williams shall be responsible for paying all costs relating to the preparation, execution, delivery, filing, recording, and termination of the liens and security interests granted herein;

- C. In the event that any Defendant fails to make a required payment when due, or the Commission is not allowed to retain any such payment, the judgment shall not be suspended as to that Defendant, and the entire amount of the judgment, less any payments previously made by any Defendants, shall immediately become due and payable as to that Defendant. Time is of the essence for the payments specified in this Section;

- D. The Commission's agreement to, and the Court's approval of, the suspension of the judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:
1. A signed declaration on behalf of Green Millionaire, LLC dated January 20, 2012;
 2. The financial statement of Syndero, signed on September 19, 2011, and addendum thereto, including all bates-stamped attachments (GM_00395366-454);
 3. Syndero's federal and California income tax returns for the years 2008-2010;
 4. Audited financial statements for Syndero for the years 2008-2010;
 5. Unaudited balance sheet for Syndero as of November 30, 2011;
 6. Syndero's cash forecast dated December 2, 2011;
 7. Itemized list of Syndero's Inventory as of November 30, 2011;
 8. The Financial Statement of Scott Waltz dated October 3, 2011, including all attachments (SW_00000001-00000234); supplemental submission of November 1, 2011, including Exhibit A thereto; and supplemental submission of Scott Waltz of November 16, 2011, including all attachments (SW_00000235); and
 9. The Financial Statement of Nigel Williams dated October 3, 2011, as reaffirmed and amended on January 18, 2012, including all attachments (NW_00000001-00000272); and supplemental submission of November 1, 2011, including Exhibit B thereto;
- E. The Commission's agreement to, and the Court's approval of, the suspension of the judgment as to Defendant Syndero, is also expressly premised upon Defendant Syndero's

material representations that it is the sole owner of the inventory set forth in the Security Agreement, Appendix 1, and that such inventory is not encumbered by any lien, assignment, pledge, security interest, or other interest;

- F. The Commission's agreement to, and the Court's approval of, the suspension of the judgment as to Defendant Syndero, is also expressly premised upon Defendant Syndero's material representations that, based upon the working papers provided to Syndero by the State of California Board of Equalization as of December 22, 2011, Syndero expects to receive a Sales Tax Refund of no less than \$650,000, and that its interest in the Sales Tax Refund is not encumbered by any lien, assignment, pledge, security interest, or other interest;
- G. The suspension of the judgment shall be lifted as to a Defendant, if upon motion by the Commission, the Court finds:
1. That such Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above;
 2. As to Defendant Syndero, that its Inventory described in the Security Agreement, Appendix 1, is encumbered by any lien, assignment, pledge, security interest, or other interest; or
 3. As to Defendant Syndero, that its interest in the Sales Tax Refund is encumbered by any lien, assignment, pledge, security interest, or other interest;
- H. If the suspension of the judgment is lifted, the judgment shall become immediately payable as to the Defendant for whom the suspension is lifted, and the amount due shall be calculated as follows: the judgment amount specified in Subsection A above (which

the parties stipulate only for purposes of this Section represents the consumer injury alleged in the Complaint), minus any payments previously made by any Defendants pursuant to this Section, plus interest computed from the date of entry of this Order pursuant to 28 U.S.C. § 1961;

- I. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and shall not seek the return of any assets;
- J. The facts as alleged in the Complaint shall be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or money judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case;
- K. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order shall have collateral estoppel effect for such purposes;
- L. Each Defendant represents that as of the date of execution of this Order, after giving effect to the terms for payment of the Judgment under this Section, such Defendant: (a) will not be insolvent (either because the Defendant's financial condition is such that the sum of the Defendant's debts is greater than the fair market value of the Defendant's assets or because the fair saleable value of the Defendant's assets is less than the amount required to pay the Defendant's probable liabilities on the Defendant's existing debts as they mature); (b) does not have unreasonably small capital with which to engage in the Defendant's business; or (c) has not incurred debts beyond the Defendant's ability to pay them as they become due;

- M. Unless they have already done so, Defendants are required, in accordance with 31 U.S.C. §.7701, to furnish to the Commission their respective Taxpayer Identifying Numbers (Social Security numbers or Employer Identification Numbers), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government; and
- N. All money paid to the Commission pursuant to this Order shall be deposited into a fund administered by the Commission or its representatives to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any monies not used for such equitable relief shall be deposited to the U.S. Treasury as disgorgement. Defendants shall have no right to challenge any actions the Commission or its representatives may take pursuant to this Section.

IX.
ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this

Order:

- A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury;
- B. For ten (10) years after entry of this Order, each Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is the

majority owner of or directly or indirectly controls, and each Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in direct consumer marketing or the marketing of any goods, products, programs, or services by means of a negative option feature; and (3) any business entity resulting from any change in structure as set forth in the Section X ("Compliance Reporting"). Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities;

- C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

X.
COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

- A. 180 days after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:
1. Each Defendant must: (a) designate at least one telephone number and an email, physical, and postal address as points of contact, which representatives of the Commission may use to communicate with Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual

Defendants must describe if they know or should know due to their own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission;

2. Additionally, each Individual Defendant must: (a) identify all telephone numbers and all email, Internet, physical, and postal addresses, including all residences; (b) identify all titles and roles in all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;
- B. For twenty (20) years following entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:
1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that any Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order;
 2. Additionally, each Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any

business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify its name, physical address, and Internet address, if any;

- C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or any similar proceeding by or against such Defendant within fourteen (14) days of its filing;
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature; and
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Syndero, Inc., Green Millionaire, LLC, Scott Waltz, and Nigel Williams.*

**XI.
RECORD KEEPING**

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for five (5) years. Specifically, each Corporate Defendant and each Individual Defendant for any business in which that Defendant, individually or

collectively with any other Defendant, is a majority owner or directly or indirectly controls, must maintain the following records:

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

XII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

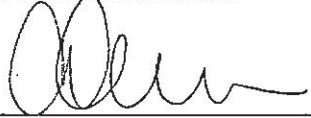
- A. Within fourteen (14) days of receipt of a written request from a representative of the Commission, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69;

- B. For matters concerning this Order, the Commission is authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present; and
- C. The Commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XIII.
RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED:

 April 12, 2012
CARMEN L. CHRISTOPHER Date
ELSIE B. KAPPLER
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Suite M-8102B
Washington, D.C. 20580
Tel: (202) 326-3643 (Christopher)
Tel: (202) 326-2466 (Kappler)
Fax: (202) 326-2558
Email: cchristopher@ftc.gov;
ekappler@ftc.gov
ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

SYNDERO, INC.

By: Date
Title:

GREEN MILLIONAIRE, LLC

By: Date
Title:

APPROVED AS TO FORM:

LINDA A. GOLDSTEIN Date
Mannatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036
ATTORNEY FOR SYNDERO, INC. AND
GREEN MILLIONAIRE, LLC

SCOTT K. WALTZ, individually Date

APPROVED AS TO FORM:

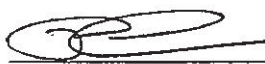
ANDREW J. STRENIO, JR. Date
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
ATTORNEY FOR SCOTT K. WALTZ

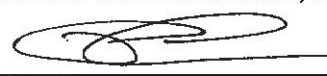
**XIII.
RETENTION OF JURISDICTION**

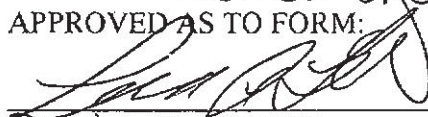
IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED:

CARMEN L. CHRISTOPHER Date
ELSIE B. KAPPLER
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Suite M-8102B
Washington, D.C. 20580
Tel: (202) 326-3643 (Christopher)
Tel: (202) 326-2466 (Kappler)
Fax: (202) 326-2558
Email: cchristopher@ftc.gov;
ekappler@ftc.gov
ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

SYNDERO, INC.
 1/25/12
By: PAT DONOHOE Date
Title: President & COO

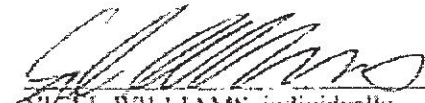
GREEN MILLIONAIRE, LLC
 1/25/12
By: PAT DONOHOE Date
Title: President & COO, Syndero (managing member of Green Millionaire LLC)
APPROVED AS TO FORM:




LINDA A. GOLDSTEIN Date
Mannatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036
ATTORNEY FOR SYNDERO, INC. AND
GREEN MILLIONAIRE, LLC

SCOTT K. WALTZ, individually Date
APPROVED AS TO FORM:

ANDREW J. STRENIO, JR. Date
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
ATTORNEY FOR SCOTT K. WALTZ


 1-26-12
NIGEL WILLIAMS, individually Date

APPROVED AS TO FORM:

 1/26/12
WILLIAM I. ROTHBARD Date

Law Offices of William I. Rothbard
1217 Yale Street, Suite 104
Santa Monica, California 90404
ATTORNEY FOR NIGEL WILLIAMS

SO STIPULATED AS TO THE
STATEMENTS IN SECTION VIII.B.12:

 1-26-12
Myra Ferpie Date

BALTIMORE 27TH APRIL 12

DONE and ORDERED in chambers, _____, Maryland, this ___ day of _____, 20__.


UNITED STATES DISTRICT JUDGE