

Complaint

IN THE MATTER OF

**LVTR LLC
D/B/A
LAS VEGAS TRAIL RIDING,
AND
TOMI A. TRUAX**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 2 OF THE CONSUMER REVIEW FAIRNESS ACT*Docket No. C-4679; File No. 182 3098
Complaint, June 19, 2019 – Decision, June 19, 2019*

This consent order addresses LVTR LLC's use of non-disparagement provisions in consumer form contracts in the course of selling their recreational horseback riding services. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The consent order prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order.

*Participants**For the Commission: Carl H. Settlemyer.**For the Respondents: Brandon McCoy, solo practitioner.***COMPLAINT**

The Federal Trade Commission, having reason to believe that LVTR LLC (also d/b/a Las Vegas Trail Riding and Las Vegas Trail Ride) and Tomi A. Truax, individually and as owner and manager of LVTR LLC (collectively "Respondents") have violated the Consumer Review Fairness Act of 2016, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent LVTR LLC ("LVTR") is a Nevada limited liability company with its principal office or place of business in Henderson, Nevada. LVTR sells recreational horseback riding services.
2. Respondent Tomi A. Truax is owner and manager of LVTR. Individually or in concert with others, she controlled or participated in the acts and practices of LVTR, including the acts and practices alleged in this complaint. Her principal office or place of business is the same as that of LVTR.

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3. The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Course of Conduct

4. From approximately mid-2015 through at least May 2018, Respondents used, in their form contracts offered to customers in the course of selling their services, the following provision:

CONFIDENTIALITY / NON DISPARAGEMENT – I agree not to call Animal Control or any governmental agency or individuals if there is a discrepancy to how the horses/ animals or property are taken care of. You will be charged a minimum of \$5000.00 in damages if you report anything or making contact with any persons or agency or by having another individuals(s) do it on your behalf. You will be held responsible for all fines that occur which includes but not limited to court, our legal representation, and fines. I agree to our non-disparagement and protection of reputation clause. For purposes of this Section, “disparage” shall mean any negative statement, whether written or oral including social media about our Company, Volunteers, Owners, Representatives, etc. For every violation, the rider will be charged a fine. The only allowance for a less than a 5 star review is through our own review system PeekPro. The Rider agrees and acknowledges that this non-disparagement provision is a material term of this Agreement, the absence of which would have resulted in the Company refusing to enter into this Agreement. I agree to not disclose by any means whatsoever the terms and conditions of this agreement to any person, group, or entity of any kind whatsoever. For every violation, I will be charged a \$5,000.00 fine per negative review. If I bring forth a lawsuit, mediation, arbitration, or any legal action, I will pay the STABLE \$20,000.00 at time of initiation, \$20,000.00 during, and \$20,000 after the resolution.

A copy of the LVTR “Release and Waiver of Liability, Assumption of Risk and Indemnification Agreement” that includes this paragraph is attached as Exhibit A hereto. Respondents’ form contracts were in effect on or after December 14, 2017.

VIOLATION OF THE CONSUMER REVIEW FAIRNESS ACT

5. The Consumer Review Fairness Act of 2016 (“CRFA”), Pub. L. No. 114-258, 15 U.S.C. § 45b, was enacted on December 14, 2016. As of March 14, 2017, Section 2(b) of the CRFA renders void, and Section 2(c) of the CRFA prohibits the offering of, provisions in form contracts that: prohibit or restrict individual consumers’ ability to communicate reviews, performance assessments, and similar analyses about a seller’s goods, services, or conduct; or that impose a penalty or fee against individual consumers who engage in such communications. 15 U.S.C. §§ 45b(a)(2), 45b(b)(1), and 45b(c).

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6. The Commission is authorized to enforce Section 2(c) of the CRFA in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, were incorporated into and made a part of the CRFA. 15 U.S.C. § 45b(d)(2)(A). The Commission's enforcement authority under the CRFA applies to contracts in effect on or after December 14, 2017. 15 U.S.C. § 45b(i)(2).

7. Pursuant to 15 U.S.C. § 45b(d)(1), a violation of 15 U.S.C. § 45b(c) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. § 57a(a)(1)(B).

Count I

8. As described in Paragraph 4 of this Complaint, Respondents have offered, in the course of selling their services, form contracts, as that term is defined in 15 U.S.C. § 45b(a)(3), that contained a provision made void by 15 U.S.C. § 45b(b)(1).

9. Therefore, the acts and practices set forth in Paragraph 4 of this Complaint occurring on or after March 14, 2017 violated Section 2(c) of the CRFA, 15 U.S.C. § 45b(c).

THEREFORE, the Federal Trade Commission this nineteenth day of June, 2019, has issued this Complaint against Respondents.

By the Commission.

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Exhibit A

COMPLAINT EXHIBIT A
FTC 182-3098

RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK AND INDEMNIFICATION AGREEMENT

Name (Please Print): _____ Home Address _____
 City _____ State _____ Zip _____ E-mail _____ Phone (____) _____

Initial Each Box In Sections A-K. After Reading Parents or Guardians Must Also Sign. Please Read Carefully Before Signing. SERIOUS INJURY MAY RESULT FROM YOUR PARTICIPATION IN THIS ACTIVITY. THIS STABLE DOES NOT GUARANTEE YOUR SAFETY

_____ A. REGISTRATION OF RIDERS AND AGREEMENT PURPOSE—In consideration of the payment of a fee and/ or the signing of this agreement, I, the above listed individual, and the parent or legal guardians thereof if a minor, do hereby agree to hire/rent from THIS STABLE, a horse, tack and equipment, personnel and trail for the purpose of horseback riding today and on all future dates.

_____ B. AGREEMENT SCOPE AND TERRITORY AND DEFINITIONS—This agreement shall be legally binding upon me, the registered rider, and the parents of legal guardians thereof if a minor, my heirs, estate, assigns, including all minor children, and personal representatives; and it shall be interpreted according to the laws of the state and county of THIS STABLE'S physical location. Any dispute by the rider shall be litigated in and venue shall be the county in which THIS STABLE is physically located. If any clause, phrase or word is in conflict with state law, then that single part is null and void. The term "HORSE" herein shall refer to all equine species. The term "HORSEBACK RIDING" herein shall refer to riding or otherwise handling of horses, ponies, mules, or donkeys, whether from the ground or mounted. The terms "I," "ME," "MY" shall herein refer to the above registered rider and the parents or legal guardians thereof if a minor.

_____ C. ACTIVITY RISK CLASSIFICATION—I UNDERSTAND THAT: Horseback riding is classified as RUGGED ADVENTURE RECREATIONAL SPORT ACTIVITY, and that there are numerous obvious and non-obvious inherent risks present in such activity despite all safety precautions. According to NEISS (National Electronic Injury Surveillance Systems of United States Consumer Products), horse activities rank 64th among the activities of people relative to injuries that result in a stay at U.S. hospitals. Related injuries can be severe, requiring more hospital days and resulting in more lasting residual effects than injuries in other activities. I/WE further understand that applicant may be participating in a "WILDERNESS EXPERIENCE" and that the meaning of this term is defined as follows: THE PURSUIT OF ADVENTURE TYPE ACTIVITY IN A WILD, RUGGED, AND UNCULTIVATED AREA OR REGION, AS OF FOREST and/or HILLS and/or MOUNTAINS and/or PLAINS and/or WETLANDS, WHICH WOULD LIKELY BE UNINHABITED BY PEOPLE AND INHABITED BY WILD ANIMALS OF MANY TYPES AND SPECIES TO INCLUDE, BUT NOT LIMITED TO, MAMMALS, REPTILES, AND INSECTS, WHICH ARE NOT TAME, MAY BE SAVAGE AND UNPREDICTABLE IN NATURE, AND ALSO WANDERING AT THEIR WILL.

_____ D. NATURE OF STABLE HORSES—I UNDERSTAND THAT: THIS STABLE chooses its rental horses for their calm dispositions and basic training as is required for use as riding horses for novice and beginning riders, and THIS STABLE follows a rigid safety program. Yet, no horse is a completely safe horse. Horses are five to 15 times larger, 20 to 40 times more powerful, and three to four times faster than a human. If a rider falls from horse to ground it will generally be at a distance of from 3-1/2 to 5-1/2 feet, and the impact may result in injury to the rider. Horseback riding is the only sport where one much smaller, weaker predator animal (human) tries to impose its will on another much larger, stronger prey animal with a mind of its own (horse) and each has a limited understanding of the other. If a horse is frightened or provoked in may divert from its training and act according to its natural survival instincts which may include, but are not limited to: Stopping Short, Changing Directions or Speed at Will; Shifting its Weight; Bucking; Rearing; Kicking; Biting; or Running from Danger.

_____ E. RIDER RESPONSIBILITY—I UNDERSTAND THAT: Upon mounting a horse and taking up the reins the rider is in primary control of the horse. The rider's safety largely depends upon his/her ability to carry out simple instructions, and his/her ability to remain balanced aboard the moving animal. I agree that the rider shall be responsible for his/her own safety, and that of an unborn child if the rider is pregnant. THIS STABLE advises pregnant women not to ride horses, unless permission is given under advice of her physician. I State that I am not now pregnant and that I have no history of epileptic seizures, heart condition or any other medical problem that could be affected by horseback riding

_____ F. CONDITIONS OF NATURE—I UNDERSTAND THAT: THIS STABLE is NOT responsible for total or partial acts, occurrences, or elements of nature that can scare a horse, cause it to fall, or react in some other unsafe way. SOME EXAMPLES ARE: thunder, lightning, rain, wind, water, wild and domestic animals, insects, reptiles, which may walk, run, or fly near, or bite or sting a horse or person; and irregular footing on out-of-door groomed or wild land which is subject to constant change in condition according to weather, temperature, and natural and man-made changes in landscape.

_____ G. CARRY-ON OBJECTS AND SHARP NOISES—I UNDERSTAND THAT: Riders must not carry loose items on rides which may fall, blow away, flap in the wind, bounce, or make sharp noises, possibly scaring a horse. SOME EXAMPLES ARE: Cameras, hats not securely fastened under the chin, toys, purses. Riders must not make sharp, loud noises, such as screaming or yelling, which may scare a horse.

_____ H. SADDLE GIRTHS-NATURAL LOOSENING—I UNDERSTAND THAT: Saddle girths (saddle fasteners around horse's belly) may loosen during a ride. If a rider notices this he/she must alert the nearest guide or wrangler as quickly as possible so action can be taken to avoid slippage of the saddle and a potential fall from the animal.

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_____. I. ACCIDENT/MEDICAL INSURANCE—I AGREE THAT: Should emergency medical treatment be required, I and/or my own accident/medical insurance company shall pay for ALL such incurred expenses.

_____. J. CONFIDENTIALITY / NON DISPARAGEMENT- I agree not to call Animal Control or any governmental agency or individuals if there is a discrepancy to how the horses/ animals or property are taken care of. You will be charged a minimum of \$5,000.00 in damages if you report anything or making contact with any persons or agency or by having another individual(s) do it on your behalf. You will be held responsible for all fines that occur which includes but not limited to court, our legal representation, and fines. I agree to our non-disparagement and protection of reputation clause. For purposes of this Section, "disparage" shall mean any negative statement, whether written or oral including social media about our Company, Volunteers, Owners, Representatives, etc. For every violation, the rider will be charged a fine. The only allowance for a less than a 5 star review is through our own review system PeekPro. The Rider agrees and acknowledges that this non-disparagement provision is a material term of this Agreement, the absence of which would have resulted in the Company refusing to enter into this Agreement. I agree to not disclose by any means whatsoever the terms and conditions of this agreement to any person, group, or entity of any kind whatsoever. For every violation, I will be charged a \$5,000.00 fine per negative review. If I bring forth a lawsuit, mediation, arbitration, or any legal action, I will pay the STABLE \$20,000.00 at time of initiation, \$20,000.00 during, and \$20,000.00 after the resolution.

_____. K. PROTECTIVE HEADGEAR OFFERING—I, for myself and on behalf of my child and/or legal ward, have been offered protective headgear (riding helmet) by THIS STABLE and do understand that the wearing of such headgear while mounting, riding, dismounting and otherwise being around horses, may prevent or reduce severity of some head injuries, and may even prevent death happening as the result of a fall or other occurrence. It is understood that STABLE-PROVIDED protective headgear may not be of perfect fit for each rider's head, and that once provided I/WE will be responsible for securing the helmet on this rider's head at all times. Mark an "X" below in the box before the statement which describes your choice to wear, or not to wear, STABLE-PROVIDED protective headgear.

() PROTECTIVE HEADGEAR ACCEPTANCE: I/WE REQUEST TO WEAR PROTECTIVE HEADGEAR WHICH THIS STABLE PROVIDES.

() PROTECTIVE HEADGEAR REFUSAL: I/WE REFUSE TO WEAR ANY TYPE OF PROTECTIVE HEADGEAR AND/OR WILL PROVIDE MY/OUR OWN. I/WE ACCEPT FULL RESPONSIBILITY FOR MY/OUR SAFETY IN THIS DECISION.

_____. L. SERVICE FEE -- I agree that the agreed service fee for each individual in my group including myself and guests, children, spouse, etc will be charged to my card. I understand that if I enjoy my ride I can tip the guide extra as they work hard caring for the horses.

_____. M. PHOTO RELEASE—I consent to and authorize STABLE to use any and all photographs, audio or visual materials taken of me, or my child for promoting purposes. No photos or video of the animals, personnel, land or facility are allowed to be taken without consent.

_____. N. LIABILITY RELEASE—In consideration of THIS STABLE and/or Tomi Truax and/or LVTR LLC allowing my participation in this activity, under the terms set forth herein, I, the rider, and the parent or legal guardian thereof if a minor, do agree to hold harmless and release THIS STABLE, its owners, agents, employees, officers, members, premises owners, insurers, and affiliated organizations from legal liability due to THIS STABLE'S negligence; and I do further agree that I shall bring no claims, demands, actions and causes of action and/or litigation, against THIS STABLE and ITS ASSOCIATES as stated above in this clause, for any economic and noneconomic losses due to bodily injury, death, property damage, sustained by me and/or my minor child or legal ward in relation to the promises and operations of THIS STABLE, to include while riding, handling, or otherwise being near horses owned by or in the care, custody and control of THIS STABLE.

All riders and Parents or Legal Guardians must sign below after reading this entire document.

SIGNER STATEMENT OF AWARENESS- I/We, the undersigned, have read and do understand the foregoing agreement, warnings, release and assumption of ride. I/We further attest that all facts relating to the applicant's physical condition, experience, and age are true and accurate. I FURTHER AGREE TO INDEMNIFY, HOLD HARMLESS AND DEFEND Tomi Truax, John Truax, LVTR LLC, its owners, land owners, employees, guides, volunteers, officials, representatives and / or agents from and against any and all liabilities, obligations, claims, negligence, damages, penalties, causes of action, costs and expenses. I represent that I am the parent or legally appointed guardian of the named child(ren) and am authorized to enter into the agreements set forth above on behalf of myself and the named child(ren). I Acknowledge that this document is a contract and agree that if a lawsuit is filed against the Stable or its owner, agents, employees, guides or wranglers for any injury or damage in breach of this contract, the Undersigned will pay all attorney's fees and costs incurred by the Stable in defending such an action. I will pay any and all legal fees and costs during any litigation so stable can defend itself without costs.

Signature of Rider (spouses must sign for themselves)

Date

_____, for

Signature of Parent, Guardian, or Spouse

Name of Rider

Date

_____, for

Signature of Parent, Guardian, or Spouse

Name of Rider

Date

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DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondents named in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondents a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondents with violations of the Consumer Review Fairness Act of 2016.

Respondents and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondents that they neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, they admit the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the Consumer Review Fairness Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

Findings

1. The Respondents are:
 - a. LVTR LLC, also d/b/a Las Vegas Trail Riding and Las Vegas Trail Ride, is a Nevada limited liability company with its principal office or place of business in Henderson, Nevada.
 - b. Tomi A. Truax, owner and manager of LVTR LLC. Individually or in concert with others, she formulates, directs, or controls the policies, acts, or practices of LVTR LLC. Her principal office or place of business is the same as that of LVTR LLC.
2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

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ORDER**Definitions**

For purposes of this Order, the following definitions apply:

- A. “Covered Communication” means a written, oral, or Pictorial review, performance assessment, or other similar analysis of goods or services, including conduct related to the goods or services.
- B. “Review-Limiting Contract Term” means a standardized contract term that:
 - 1. prohibits or restricts the ability of a person who is a party to the contract to engage in a Covered Communication;
 - 2. imposes a penalty or fee against a person who is a party to the contract for engaging in a Covered Communication; or
 - 3. transfers, or requires a person who is a party to the contract to transfer, to any other person any intellectual property rights in a Covered Communication, with the exception of a non-exclusive license to lawfully use a Covered Communication about a Respondent’s goods or services.
- C. “Pictorial” includes pictures, photographs, video, illustrations, and symbols.
- D. “Respondents” means LVTR LLC and Tomi A. Truax, individually or collectively.
 - 1. “Corporate Respondent” means LVTR LLC (d/b/a Las Vegas Trail Riding and Las Vegas Trail Ride), a limited liability company, and its successors and assigns.
 - 2. “Individual Respondent” means Tomi A. Truax.

Provisions**I. Prohibited Use of Review-Limiting Contract Terms**

IT IS ORDERED that Respondents, and Respondents’ members, managers, officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the sale or leasing of any good or service, must not:

- A. offer to any prospective customer a contract, or offer to any customer a renewal contract, that includes a Review-Limiting Contract Term;

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- B. require that a customer accept a Review-Limiting Contract Term as a condition of any Respondent's fulfillment of its obligations under a customer contract that a Respondent entered into before the effective date of this Order; or
- C. attempt to enforce or assert the validity of any Review-Limiting Contract Term in any customer contract that a Respondent entered into before the effective date of this Order.

Nothing in this Provision shall require a Respondent to publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

II. Notice to Consumers

IT IS FURTHER ORDERED that Respondents must notify consumers online, as follows:

- A. Respondents must post a web page notice as shown in Attachment A, except with the heading "Your Right to Post Honest Reviews," on a page with the lasvegastrailriding.com domain name.
- B. For as long as the web page notice is posted, Respondents must maintain a link to the web page notice and embed the link in the words "Your Right to Post Honest Reviews" on the lasvegastrailriding.com home page and adjacent to the heading of any web page that any Respondent owns or operates that posts or links to consumer reviews or testimonials.
- C. The web page notice and any link to it must, by its size, contrast, location, and other characteristics, stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- D. The web page notice must be posted not later than 3 days after the effective date of this Order and for at least 1 year after the effective date of this Order.

III. Acknowledgments of the Order

IT IS FURTHER ORDERED that Respondents obtain acknowledgments of receipt of this Order:

- A. Each Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after the issuance date of this Order, Individual Respondent for any business that she, individually or collectively with Corporate Respondent, owns a majority of or controls directly or indirectly, and Corporate Respondent, must

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deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for drafting, approving, or enforcing customer contracts, or for responding to Covered Communications and all agents and representatives who participate in drafting, approving, or enforcing customer contracts, or responding to Covered Communications; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Reports and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

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

IV. Compliance Reports and Notices

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

- A. One year after the issuance date of this Order, each Respondent must submit a compliance report, sworn under penalty of perjury, in which:
1. Each Respondent must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (b) identify all of that Respondent'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 goods and services offered and the means of advertising, marketing, and sales, any conduct toward consumers who have engaged in Covered Communications, and the involvement of any other Respondent (which Individual Respondent must describe if she knows or should know due to her own involvement); (d) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes Respondent made to comply with this Order; and (e) provide a copy of each Acknowledgment of this Order obtained pursuant to this Order, unless previously submitted to the Commission.
 2. Additionally, Individual Respondent must: (a) identify all her telephone numbers and all her physical, postal, email and Internet addresses, including all residences; (b) identify all her business activities, including any business for which she performs services whether as an employee or otherwise and any entity in which she has any ownership interest; and (c) describe in detail her involvement in each such business activity, including

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title, role, responsibilities, participation, authority, control, and any ownership.

- B. For 3 years after the issuance date of this Order, each Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. Each Respondent must submit notice of any change in: (a) any designated point of contact; or (b) the structure of any Corporate Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly 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, Individual Respondent must submit notice of any change in: (a) name, including alias or fictitious name, or residence address; or (b) title or role in any business activity, including (i) any business for which she performs services whether as an employee or otherwise and (ii) any entity in which she has any ownership interest and over which she has direct or indirect control. For each such business activity, also identify its name, physical address, and any Internet address.
- C. Each Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Respondent within 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 28 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.
- 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: *In re LVTR LLC*, C-4679.

V. Recordkeeping

IT IS FURTHER ORDERED that Respondents must create certain records for 3 years after the issuance date of this Order, and retain each such records for 5 years, unless otherwise

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specified below. Specifically, Corporate Respondent and Individual Respondent, for any business that such Respondent, individually or collectively with any other Respondents, owns a majority of or controls directly or indirectly, must create and retain the following records:

- A. Personnel records showing, for each person providing services in relation to any aspect of this Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- B. A copy of: each unique contract relating to a Covered Communication; each unique contract used in connection with the sale or leasing of Respondent's goods or services; all communications with consumers threatening any legal action relating to any Covered Communication; and all parties' court filings and Respondents' discovery responses in any legal action relating to any Covered Communication; and
- C. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

VI. Compliance Monitoring

IT IS FURTHER ORDERED that, for the purpose of monitoring Respondents' compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, each Respondent must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with each Respondent. Respondents must permit representatives of the Commission to interview anyone affiliated with any Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondents or any individual or entity affiliated with Respondents, 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.

VII. Order Effective Dates

IT IS FURTHER ORDERED that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20

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years from the date of its issuance (which date may be stated at the end of this Order, near the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after this Order has terminated pursuant to this Provision.

Provided, further, that if such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of this Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Order will terminate according to this Provision as though the complaint had never been filed, except that this Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ATTACHMENT A to the Order –Web Page Notice Template:

The notice must be in the following form, appearing on Respondents' websites with the underlined text completed as directed:

Your Right to Post Honest Reviews

Dear Customers:

I am writing to tell you that the Federal Trade Commission (FTC), the nation's consumer protection agency, has alleged that we used contract provisions that violated the Consumer Review Fairness Act (CRFA). The CRFA protects your ability to share your honest opinions about a business's products, services, or conduct in any forum, including social media. According to the FTC, we used provisions in our booking form contracts that unlawfully restricted our customers (including you) from sharing truthful information and opinions about their experiences with us.

Analysis to Aid Public Comment

To settle the case, we are contacting our customers to tell you that these contract provisions are void and that we cannot enforce them against you. You can publish your honest review even if you say something negative about us or our services.

If you have questions about the FTC's case, visit [\[add case page alias URL provided by FTC staff with embedded hyperlink\]](#).

Sincerely,

Tomi A. Truax

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a consent order as to LVTR LLC and Tomi A. Truax ("respondents").

The proposed consent order ("order") has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondents' use of non-disparagement provisions in consumer form contracts in the course of selling their recreational horseback riding services. The complaint alleges that the respondents violated Section 2(c) of the Consumer Review Fairness Act ("CRFA") by offering to consumers form contracts that contained non-disparagement provisions made void by Section 2(b) of the CRFA. The CRFA defines a form contract as a contract with standardized terms, used in the course of selling or leasing goods or services, and imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related conduct involving the use of contract terms that prohibit, restrict, penalize, or transfer rights in consumer reviews or evaluation of the respondents, their goods, or their services. The CRFA authorizes the Commission to seek civil penalties for knowing violations, but the complaint does not allege that the respondents' violations were knowing, and the order does not provide for monetary relief.

Part I prohibits, in the sale or leasing of any good or service, the respondents from: offering to any prospective customer a contract, or offering to any customer a renewal contract, that includes a review-limiting term; requiring that a customer accept such a term as a condition of the respondents' fulfillment of their obligations under contracts entered into before the

Analysis to Aid Public Comment

effective date of the order; or attempting to enforce or assert the validity of such a term in customer contracts entered into before the effective date of the order. Part I would not require that the respondents publish or host the content of any person, affect any other legal duty of a party to a contract, or affect any cause of action arising from the breach of such duty.

Part II requires the respondents to notify customers via their web site that the non-disparagement provisions in their form contracts are void and cannot be enforced, and that customers who entered into contracts with those provisions can publish their honest reviews about the respondents, even if their comments are negative.

Part III requires the respondents to submit signed acknowledgments that relevant personnel received the order.

Part IV requires the respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in company structure that might affect compliance obligations.

Part V contains recordkeeping requirements for personnel records, consumer contracts, communications with consumers threatening any legal action relating to any review; and court filings and the company's discovery responses in legal actions over consumer reviews, as well as all records necessary to demonstrate compliance or non-compliance with the order.

Part VI contains other requirements related to the Commission's monitoring of the respondent's order compliance.

Part VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order's terms in any way.

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

IN THE MATTER OF **1-800 CONTACTS, INC.**

Docket No. 9372. Order, January 31, 2019

Order, *suo motu*, *nunc pro tunc*, extending the final and effective date of the Final Order.

ORDER STAYING EFFECTIVE DATE OF FINAL ORDER

By this Order, we, on our own motion, extend the final and effective date of the Final Order in this matter until March 1, 2019.

The Final Order was set to become final and effective on January 25, 2019. On December 10, 2018, Respondent filed an application to stay the Final Order pending judicial review. Complaint Counsel opposed that application on December 18, 2018.

Commission Rule 3.56 provides that the Commission ordinarily shall issue a ruling on an application to stay within 30 days after the application is filed.¹ On December 28, however, the lapse in appropriations and subsequent shutdown of ordinary agency operations rendered it impossible for the Commission to resolve the pending application for a stay while the shutdown continued.

In light of the prolonged shutdown of agency operations, the Commission has determined to extend its time to issue its ruling on Respondent's application until on or before February 14, 2019.

Further, in order to allow the Commission sufficient time to address the stay motion before any judicial stay proceedings become necessary, and out of fairness to the parties, we stay the effective date of the Final Order until March 1, 2019. This stay is retroactive to January 25, 2019, the original effective date.

IT IS HEREBY ORDERED, *nunc pro tunc*, that the final and effective date of the Final Order is stayed from January 25, 2019, to March 1, 2019.

By the Commission, Commissioner Wilson not participating.

¹ *Accord* 16 C.F.R. § 3.56(b). *See also* 15 U.S.C. § 45(g)(2)(B).