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9 FEDERAL TRADE COMMISSION

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

13  
14 FEDERAL TRADE COMMISSION,  
Plaintiff,

15 v.

16 BREATHOMETER, INC., a corporation,

17 and

18  
19 CHARLES MICHAEL YIM, individually and as  
Chief Executive Officer of Breathometer,  
20 Inc.,

21 Defendants.  
22

Case No. 3:17-cv-314-LB

**STIPULATED FINAL ORDER FOR  
PERMANENT INJUNCTION AND  
OTHER EQUITABLE RELIEF**

23 Plaintiff, the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint  
24 for Permanent Injunction and Other Equitable Relief (“Complaint”) in this matter, pursuant to  
25 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The  
26 Commission and Defendants stipulate to the entry of this Stipulated Final Order for Permanent  
27 Injunction and Other Equitable Relief (“Order”) to resolve all matters in dispute in this action  
28

1 between them.

2 THEREFORE, IT IS ORDERED as follows:

3 **FINDINGS**

- 4 1. This Court has jurisdiction over this matter.
- 5 2. The Complaint charges that Defendants participated in deceptive and unfair acts or
- 6 practices and disseminated false advertisements in violation of Sections 5 and 12 of the FTC
- 7 Act, 15 U.S.C. §§ 45(a) and 52, in connection with the advertising, labeling, promotion,
- 8 offering for sale, sale, or distribution of Breathometer Original (“Original”) and Breathometer
- 9 Breeze (“Breeze”) breathalyzers.
- 10 3. Defendants neither admit nor deny any of the allegations in the Complaint, except as
- 11 specifically stated in this Order. Only for purposes of this action, Defendants admit the facts
- 12 necessary to establish jurisdiction.
- 13 4. Defendants waive any claim that they may have under the Equal Access to Justice Act,
- 14 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and
- 15 agree to bear their own costs and attorney fees.
- 16 5. Defendants waive all rights to appeal or otherwise challenge or contest the validity of
- 17 this Order.
- 18
- 19
- 20

21 **DEFINITIONS**

22 For the purpose of this Order, the following definitions apply:

- 23 1. **“Breathalyzer Device”** means any device advertised for use by consumers to measure
- 24 their blood or breath alcohol concentration in connection with driving decisions.
- 25 2. **“Corporate Defendant”** means Breathometer, Inc. and its successors and assigns.
- 26 3. **“Covered Product”** means any Device other than a Breathalyzer Device.
- 27
- 28

1 4. **“Defendants”** means the Individual Defendant and the Corporate Defendant,  
2 individually, collectively, or in any combination.

3 5. **“Device”** means any instrument, apparatus, implement, machine, contrivance, implant,  
4 in vitro reagent, or other similar or related article, including any component, part, or accessory,  
5 which is:  
6

7 a) recognized in the official National Formulary, or the United States

8 Pharmacopeia, or any supplement to them,

9 b) intended for use in the diagnosis of disease or other conditions, or in the cure,  
10 mitigation, treatment, or prevention of disease, in humans or other animals, or  
11

12 c) intended to affect the structure or any function of the body of humans or other  
13 animals, and

14 which does not achieve any of its principal intended purposes through chemical action within or  
15 on the body of humans or other animals and which is not dependent upon being metabolized for  
16 the achievement of any of its principal intended purposes; *provided that*, for the purpose of this  
17 order, “Device” does not include evidential breath alcohol testers that have been tested and  
18 approved by the Department of Transportation.  
19

20 6. **“Including”** means “including but not limited to.”

21 7. **“Individual Defendant”** means Charles Michael Yim.

## 22 **ORDER**

### 23 **I. PROHIBITED REPRESENTATIONS: CLAIMS REGARDING** 24 **BREATHALYZER DEVICES**

25 IT IS ORDERED that Defendants, Defendants’ officers, agents, employees, and all  
26 other persons in active concert or participation with any of them, who receive actual notice of  
27 this Order, whether acting directly or indirectly, in connection with the advertising, labeling,  
28

1 promotion, offering for sale, sale, or distribution of any Breathalyzer Device are permanently  
2 restrained and enjoined from making, or assisting others in making, expressly or by implication,  
3 including through the use of a product or program name, endorsement, depiction, or illustration,  
4 any representation that the Breathalyzer Device:

5           A.       Detects consumers' blood alcohol levels; or

6           B.       Is comparable or superior to other Breathalyzer Devices or to devices for blood  
7 or breath alcohol concentration detection used by law enforcement,  
8 unless the representation is non-misleading and, at the time of making such representation, they  
9 possess and rely upon competent and reliable scientific evidence that is sufficient in quality and  
10 quantity based on standards generally accepted in the relevant scientific fields, when considered  
11 in light of the entire body of relevant and reliable scientific evidence, to substantiate that the  
12 representation is true.  
13  
14

15           For purposes of this Provision, competent and reliable scientific evidence means testing  
16 that demonstrates that the manufactured device meets the accuracy specifications set for  
17 evidential breath alcohol testers that have been tested and approved by the Department of  
18 Transportation as laid out in *Highway Safety Programs; Model Specifications for Devices to*  
19 *Measure Breath Alcohol*, 58 FR 48705, Sept. 17, 1993, that is, repeated testing (at least 10  
20 measurements per condition, at three decimal places) must demonstrate accuracy to within  $\pm$   
21 0.005 BAC, with a standard deviation within  $\pm$  0.0042, at 0.020, 0.040, 0.080; and to within  $\pm$   
22 0.008 BAC, with a standard deviation within  $\pm$  0.0042, at 0.160 BAC. Tests must demonstrate  
23 the same levels of accuracy after the device has "soaked" in a temperature control chamber of  
24 20° C ( $\pm$  1° C) for one hour, and also at 30° C ( $\pm$  1° C) for one hour. Further, to ensure stability  
25 of readings, the tests for accuracy at 0.080 must be repeated thirty days after the initial tests, to  
26 ensure that the device holds calibration.  
27  
28

1 Unless otherwise specified, all such tests must be performed in the absence of drafts and  
2 at prevailing normal laboratory temperature, humidity, and barometric pressure. Ethyl alcohol  
3 must be used to prepare the test samples. A Department of Transportation approved calibrating  
4 unit of the type that uses aqueous alcohol solutions thermostated at 34° C and a ratio of  
5 headspace concentration of 0.000393 must be used to provide the BAC samples. The  
6 calibrating unit must be capable of delivering 10 complete vapor samples with alcohol depletion  
7 of not more than 1%.

9 Tests must further demonstrate that the product does not suffer from acetone  
10 interference at .020 BAC under the following two conditions: 70 microliters acetone per 500 ml  
11 solution, and 115 microliters acetone per 500 ml solution.

13 In addition, repeated tests (at least 10 measurements) must show accuracy within  $\pm .005$   
14 BAC at 0.000, with no single result greater than 0.005 BAC. These tests must be conducted on  
15 one or more persons who have not consumed alcohol in the past 48 hours nor smoked within the  
16 past 20 minutes, using his or own breath.

## 17 **II. PROHIBITED REPRESENTATIONS: OTHER DEVICE CLAIMS**

18 IT IS FURTHER ORDERED that the Individual Defendant, his agents, employees, and  
19 all other persons in active concert or participation with any of them, who receive actual notice  
20 of this Order, whether acting directly or indirectly, in connection with the advertising, labeling,  
21 promotion, offering for sale, sale, or distribution of any Covered Product, are permanently  
22 restrained and enjoined from making, or assisting others in making, directly or by implication,  
23 including through the use of a product or program name, endorsement, depiction, or illustration,  
24 any representation about the absolute or comparative safety, health benefits, performance, or  
25 efficacy of any Covered Product, unless the representation is non-misleading, and, at the time of  
26 making such representation, they possess and rely upon competent and reliable scientific  
27  
28

1 evidence that is sufficient in quality and quantity based on standards generally accepted by  
2 experts in the relevant disease, condition, or function to which the representation relates, when  
3 considered in light of the entire body of relevant and reliable scientific evidence, to substantiate  
4 that the representation is true.

5  
6 For purposes of this Provision, competent and reliable scientific evidence means tests,  
7 analyses, research, or studies that (1) have been conducted and evaluated in an objective manner  
8 by experts in the relevant disease, condition, or function to which the representation relates; (2)  
9 that are generally accepted by such experts to yield accurate and reliable results; and (3) that are  
10 randomized, double-blind, and placebo-controlled human clinical testing of the Covered  
11 Product when such experts would generally require such human clinical testing to substantiate  
12 that the representation is true. In addition, when such tests or studies are human clinical tests or  
13 studies, all underlying or supporting data and documents generally accepted by experts in the  
14 field as relevant to an assessment of such testing as described in the Provision of this Order  
15 entitled Preservation of Records Relating to Competent and Reliable Human Clinical Tests or  
16 Studies must be available for inspection and production to the Commission.  
17

### 18 **III. PROHIBITED MISREPRESENTATIONS REGARDING TESTS**

19  
20 IT IS FURTHER ORDERED that the Individual Defendant, his agents, employees, and  
21 all other persons in active concert or participation with any of them, who receive actual notice  
22 of this Order, whether acting directly or indirectly, in connection with the advertising, labeling,  
23 promotion, offering for sale, sale, or distribution of any Covered Product, are permanently  
24 restrained and enjoined from misrepresenting, or assisting others in misrepresenting, expressly  
25 or by implication, including through the use of a product name, endorsement, depiction, or  
26 illustration:  
27

28 A. That the performance or benefits of the Covered Product are scientifically or

1 clinically proven or otherwise established;

2 B. That the performance or benefits of the Covered Product have been proven by  
3 government lab-grade testing; or

4 C. The existence, contents, validity, results, conclusions, or interpretations of any  
5 test, study, or other research.  
6

7 **IV. PRESERVATION OF RECORDS RELATING TO COMPETENT AND**  
8 **RELIABLE HUMAN CLINICAL TESTS OR STUDIES**

9 IT IS FURTHER ORDERED that, with regard to any human clinical test or study  
10 (“test”) upon which the Individual Defendant relies to substantiate any claim covered by the  
11 Provision of this Order entitled Prohibited Representations: Other Device Claims, the  
12 Individual Defendant must secure and preserve all underlying or supporting data and documents  
13 generally accepted by experts in the field as relevant to an assessment of the test, including:

14 A. All protocols and protocol amendments, reports, articles, write-ups, or other  
15 accounts of the results of the test, and drafts of such documents reviewed by the test sponsor or  
16 any other person not employed by the research entity;  
17

18 B. All documents referring or relating to recruitment; randomization; instructions,  
19 including oral instructions, to participants; and participant compliance;

20 C. Documents sufficient to identify all test participants, including any participants  
21 who did not complete the test, and all communications with any participants relating to the test;  
22 all raw data collected from participants enrolled in the test, including any participants who did  
23 not complete the test; source documents for such data; any data dictionaries; and any case report  
24 forms;  
25

26 D. All documents referring or relating to any statistical analysis of any test data,  
27 including any pretest analysis, intent-to-treat analysis, or between-group analysis performed on  
28

1 any test data; and

2 E. All documents referring or relating to the sponsorship of the test, including all  
3 communications and contracts, between any sponsor and the test's researchers.

4 *Provided, however,* the preceding preservation requirement does not apply to a reliably  
5 reported test, unless the test was conducted, controlled, or sponsored, in whole or in part by:  
6 (1) Individual Defendant; (2) his officers, agents, representatives, or employees; (3) any other  
7 person or entity in active concert or participation with him; (4) any person or entity affiliated  
8 with or acting on his behalf; (5) any supplier of any component contained in the product at issue  
9 to any of the foregoing or to the product's manufacturer; or (6) the supplier or manufacturer of  
10 such product. For the purposes of this Provision, "reliably reported," for a human clinical test  
11 or study ("test"), means a report of the test has been published in a peer-reviewed journal, and  
12 such published report provides sufficient information about the test for experts in the relevant  
13 field to assess the reliability of the results.

14  
15 For any test conducted, controlled, or sponsored, in whole or in part, by Individual  
16 Defendant, he must establish and maintain reasonable procedures to protect the confidentiality,  
17 security, and integrity of any personal information collected from or about participants. These  
18 procedures must be documented in writing and must contain administrative, technical, and  
19 physical safeguards appropriate to his organization's size and complexity, the nature and scope  
20 of his activities, and the sensitivity of the personal information collected from or about the  
21 participants.

22  
23 **V. PROHIBITED CONDUCT REGARDING THE BREATHOMETER APP**

24  
25 IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees,  
26 and all other persons in active concert or participation with any of them, who receive actual  
27 notice of this Order, are permanently restrained and enjoined from re-enabling the Breathometer  
28



1 app's breathalyzer functions, which were disabled prior to entry of this Order.

2 **VI. CONSUMER NOTICE**

3 IT IS FURTHER ORDERED that Defendants must provide adequate and timely notice  
4 of this Order to owners of both Original and Breeze by email and on the Breathometer website  
5 homepage.  
6

7 A. For the purposes of this paragraph, adequate and timely notice means:

8 1. An email, sent within five days of entry of this Order, in the exact wording and  
9 format set forth in Attachment A, with the subject line "Your Breathometer Breathalyzer Refund," and  
10 without any other materials accompanying the email; and

11 2. A prominent notice on the Breathometer website homepage, posted within two  
12 days of entry of this Order, and remaining on the homepage until 90 days after entry of this Order, in the  
13 exact wording set forth in Attachment B, in a location that does not require the website visitor to scroll to  
14 see the notice, even if accessing the website from a mobile phone or tablet.  
15

16 B. The notices must provide the link to an online Claim Form containing the exact  
17 wording set forth in Attachment C, in an easily legible format.

18 **VII. CONSUMER REDRESS**

19 IT IS FURTHER ORDERED that Defendants must provide full refunds to owners of  
20 Breathometer Brand Breathalyzer Devices as follows:

21 A. Refunds must be for the full amount claimed by the owner in the online Claim  
22 Form (set forth in Attachment C), unless Defendants have already fully refunded such owner.  
23

24 B. Defendants must provide refunds to any owner who submits the online Claim  
25 Form within 125 days after entry of this Order; such refund must be provided within 90 days of  
26 Defendants' receipt of a completed Claim Form from an owner.

27 C. Defendants must not require owners to submit any documentation other than the  
28

1 completed Claim Form nor impose any condition on owners seeking refunds.

2 D. Within 230 days of entry of this Order, Defendants must provide the FTC with  
3 records sufficient to show the dates, times, and form of notifications to each owner, the refunds  
4 requested and paid to each such owner, any refund requests that were denied due to a prior full  
5 refund, and any refunds paid by Defendants to individual consumers after June 9, 2016.  
6

7 E. In the event that refunds paid to owners pursuant to this Provision total less than  
8 \$1 million, Defendants, jointly and severally, must pay to the Commission, within 235 days of  
9 entry of this Order, the difference between the refunds paid and \$1 million; *provided that*, cash  
10 refunds paid by Defendants to individual consumers after June 9, 2016 will be considered to  
11 have been made pursuant to this Provision.  
12

13 F. Defendants relinquish dominion and all legal and equitable right, title, and  
14 interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

15 G. All money paid to the Commission pursuant to this Order may be deposited into  
16 a fund administered by the Commission or its designee to be used for equitable relief, including  
17 consumer redress and any attendant expenses for the administration of any redress fund. If a  
18 representative of the Commission decides that direct redress to consumers is wholly or partially  
19 impracticable or money remains after redress is completed, the Commission may apply any  
20 remaining money for such other equitable relief (including consumer information remedies) as  
21 it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any  
22 money not used for such equitable relief is to be deposited to the U.S. Treasury as  
23 disgorgement. Defendants have no right to challenge any actions the Commission or its  
24 representatives may take pursuant to this paragraph.  
25  
26

27 H. The facts alleged in the Complaint will be taken as true, without further proof, in  
28 any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to

1 enforce its rights to any payment or monetary judgment pursuant to this Order, such as a  
2 nondischargeability complaint in any bankruptcy case.

3 I. The facts alleged in the Complaint establish all elements necessary to sustain an  
4 action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11  
5 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purpose.  
6

7 J. Defendants acknowledge that their Taxpayer Identification Numbers (Social  
8 Security Numbers or Employer Identification Numbers), which Defendants must immediately  
9 furnish to the Commission, may be used for collecting and reporting on any delinquent amount  
10 arising out of this Order, in accordance with 31 U.S.C. §7701.

#### 11 **VIII. CUSTOMER INFORMATION**

12 IT IS FURTHER ORDERED that Defendants, Defendants' officers, agents, employees,  
13 and all other persons in active concert or participation with any of them, who receive actual  
14 notice of this Order, whether acting directly or indirectly, are permanently restrained and  
15 enjoined from failing to provide sufficient customer information to enable the Commission to  
16 efficiently monitor consumer refunds as prescribed by the Provision of this Order entitled  
17 Consumer Redress. If a representative of the Commission requests in writing any information  
18 related to redress, Defendants must provide it, in the form prescribed by the Commission,  
19 within 14 days.  
20

#### 21 **IX. ORDER ACKNOWLEDGMENTS**

22 IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this  
23 Order:  
24

25 A. Each Defendant, within 7 days of entry of this Order, must submit to the  
26 Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.  
27

28 B. For 3 years after entry of this Order, for any business that the Individual

1 Defendant, individually or collectively with the Corporate Defendant, is the majority owner or  
2 controls directly or indirectly, and each Corporate Defendant, must deliver a copy of this Order  
3 to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees,  
4 agents, and representatives who participate in conduct related to the subject matter of the Order;  
5 and (3) any business entity resulting from any change in structure as set forth in the Provision  
6 titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for  
7 current personnel. For all others, delivery must occur before they assume their responsibilities.  
8

9 C. From each individual or entity to which a Defendant delivered a copy of this  
10 Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of  
11 receipt of this Order.  
12

#### 13 **X. COMPLIANCE REPORTING**

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

16 A. Within one year after entry of this Order, each Defendant must submit a  
17 compliance report, sworn under penalty of perjury:  
18

19 1. Each Defendant must: (a) identify the primary physical, postal, and  
20 email address and telephone number, as designated points of contact, which representatives of  
21 the Commission may use to communicate with Defendant; (b) identify all of that Defendant's  
22 businesses by all of their names, telephone numbers, and physical, postal, email, and Internet  
23 addresses; (c) describe the activities of each business, including the goods and services offered,  
24 the means of advertising, marketing, and sales, and the involvement of any other Defendant  
25 (which the Individual Defendant must describe if he knows or should know due to his own  
26 involvement); (d) describe in detail whether and how that Defendant is in compliance with each  
27 Provision of this Order; and (e) provide a copy of each Order Acknowledgment obtained  
28

1 pursuant to this Order, unless previously submitted to the Commission.

2           2.           Additionally, the Individual Defendant must: (a) identify all telephone  
3 numbers and all physical, postal, email and Internet addresses, including all residences; (b)  
4 identify all business activities, including any business for which the Individual Defendant  
5 performs services whether as an employee or otherwise and any entity in which the Individual  
6 Defendant has direct or indirect control; and (c) describe in detail the Individual Defendant's  
7 involvement in each such business, including title, role, responsibilities, participation, authority,  
8 control, and any ownership.

9  
10           B.           For 10 years after entry of this Order, each Defendant must submit a compliance  
11 notice, sworn under penalty of perjury, within 30 days of any change in the following:

12           1.           Each Defendant must report any change in: (a) any designated point of  
13 contact; or (b) the structure of the Corporate Defendant or any entity that such Defendant has  
14 any ownership interest in or controls directly or indirectly that may affect compliance  
15 obligations arising under this Order, including: creation, merger, sale, or dissolution of the  
16 entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this  
17 Order.

18  
19           2.           Additionally, the Individual Defendant must report any change in: (a)  
20 name, including aliases or fictitious name, or residence address; or (b) title or role in any  
21 business activity, including any business for which such Defendant performs services whether  
22 as an employee or otherwise and any entity in which such Defendant has direct or indirect  
23 control, and identify the name, physical address, and any Internet address of the business or  
24 entity.

25  
26           C.           Each Defendant must submit to the Commission notice of the filing of any  
27 bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant  
28

1 within 14 days of its filing.

2 D. Any submission to the Commission required by this Order to be sworn under  
3 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by  
4 concluding: “I declare under penalty of perjury under the laws of the United States of America  
5 that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s  
6 full name, title (if applicable), and signature.  
7

8 E. Unless otherwise directed by a Commission representative in writing, all  
9 submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or  
10 sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,  
11 Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,  
12 Washington, DC 20580. The subject line must begin: FTC v. Breathometer, Inc., et al.  
13

#### 14 **XI. RECORDKEEPING**

15 IT IS FURTHER ORDERED that Defendants must create certain records for 10 years  
16 after entry of the Order, and retain each such record for 5 years. Specifically, the Corporate  
17 Defendant and the Individual Defendant for any business that he, individually or collectively  
18 with the Corporate Defendant, is a majority owner or controls directly or indirectly, must create  
19 and retain the following records:  
20

21 A. Accounting records showing the revenues from all goods or services sold;

22 B. Personnel records showing, for each person providing services, whether as an  
23 employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position;  
24 dates of service; and (if applicable) the reason for termination;  
25

26 C. Records of all consumer complaints and refund requests, whether received  
27 directly or indirectly, such as through a third party, and any response;

28 D. All records necessary to demonstrate full compliance with each Provision of this

1 Order, including all submissions to the Commission; and

2 E. A copy of each unique advertisement or other marketing material.

3 **XII. COMPLIANCE MONITORING**

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

7  
8 A. Within 14 days of receipt of a written request from a representative of the  
9 Commission, each Defendant must: submit additional compliance reports or other requested  
10 information, which must be sworn under penalty of perjury; appear for depositions; and produce  
11 documents for inspection and copying. The Commission is also authorized to obtain discovery,  
12 without further leave of court, using any of the procedures prescribed by Federal Rules of Civil  
13 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

14  
15 B. For matters concerning this Order, the Commission is authorized to  
16 communicate directly with each Defendant. Defendant must permit representatives of the  
17 Commission to interview any employee or other person affiliated with any Defendant who has  
18 agreed to such an interview. The person interviewed may have counsel present.

19  
20 C. The Commission may use all other lawful means, including posing, through its  
21 representatives as consumers, suppliers, or other individuals or entities, to Defendants or any  
22 individual or entity affiliated with Defendants, without the necessity of identification or prior  
23 notice. Nothing in this Order limits the Commission's lawful use of compulsory process,  
24 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

25  
26 D. Upon written request from a representative of the Commission, any consumer  
27 reporting agency must furnish consumer reports concerning the Individual Defendant, pursuant  
28 to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. §1681b(a)(1).

**XIII. RETENTION OF JURISDICTION**

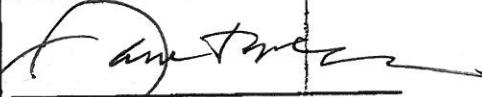
IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

PURSUANT TO STIPULATION, IT IS SO ORDERED this 30<sup>th</sup> day of January, 2017, 2016.

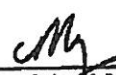
**UNITED STATES DISTRICT JUDGE**

**SO STIPULATED AND AGREED:**


**FOR PLAINTIFF:**

  
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ELIZABETH JONES SANGER  
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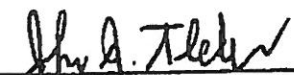
**FOR DEFENDANT BREATHOMETER:**


 Date: 11/14/16  
Charles Michael Yim, Chief Executive Officer  
of Breathometer, Inc.

**FOR DEFENDANT CHARLES MICHAEL YIM:**

 Date: 11/14/16  
Charles Michael Yim

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11 COUNSEL FOR MR. YIM  
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[EMAIL CONTENT]

Dear Breathometer customer:

You are receiving this notice as a result of a lawsuit alleging deceptive advertising filed against us by the Federal Trade Commission, the nation's consumer protection agency. We have disabled the Breathometer app and have agreed to offer refunds to Breathometer Original and Breathometer Breeze customers.

If you have questions, please contact us [800-xxx-xxxx] or [BAC@breathometer.com](mailto:BAC@breathometer.com).

## Team Breathometer

**ATTACHMENT B**  
**[NOTICE ON BREATHOMETER WEBSITE HOMEPAGE]**

## Important Refund Notice for Original and Breeze Customers

[clickable button, linked to Attachment C, a page on the Breathometer website]

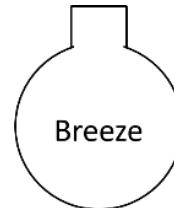
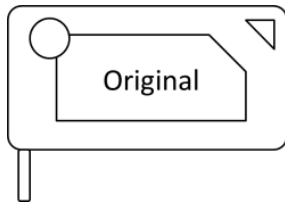
**ATTACHMENT C**  
**[REFUND CLAIM VIA FILLABLE FORM WEBPAGE]**

**Breathometer Original and Breathometer Breeze**  
**REFUND CLAIM FORM**  
**FTC v. Breathometer, Inc. and Others**

**Breathometer Original and Breeze customers are entitled to a refund as a result of a settlement in a lawsuit filed against us by the Federal Trade Commission, the nation's consumer protection agency.**

**Complete and Submit this**  
**Form By**  
**[insert date 90 days after the date notice was provided**  
**pursuant to Provision VI.A.1. of the Order]**

First Name \_\_\_\_\_  
Last Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_  
State \_\_\_\_\_  
ZIP Code \_\_\_\_\_  
Email Address \_\_\_\_\_  
Product Serial Number (Optional) \_\_\_\_\_



☐ I bought a Breathometer Original for \$49.99.  
Please send me a refund.

☐ I bought a Breathometer Breeze for  
\$99.99. Please send me a refund.

☐ I bought a Breathometer Original for  
\$\_\_\_\_\_ (fill in amount you paid).  
Please send me a refund.

☐ I bought a Breathometer Breeze for  
\$\_\_\_\_\_ (fill in amount you paid).  
Please send me a refund.

Signature \_\_\_\_\_  
(type your name, this is your electronic signature)  
Date \_\_\_\_\_

SUBMIT [clickable button]

Contact us at [800-xxx-xxxx] or BAC@breathometer.com if you have any questions.