



APPROVED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

Dated: Sep 06 2012 06:33PM

Michael A. Martinez
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>CONSOLIDATED MEDICAL SERVICES, LLC and JOSEPH BENEDETTO, individually</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No. 12CV1394</p> <p>Division 259</p>
<p>(PROPOSED) FINAL CONSENT JUDGMENT</p>	

This matter is before the Court on the parties’ Stipulation for Entry of a Final Consent Judgment. The Court has reviewed the Stipulation, the Complaint and is otherwise advised in the grounds therefore. The Court concludes that good cause has been shown for entering this Final Consent Judgment.

Accordingly, IT IS ORDERED that:

I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The injunctive provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, *et. seq.* C.R.S. (2012) (“CCPA”). This Final Consent Judgment shall apply to DEFENDANTS CONSOLIDATED MEDICAL SERVICES, LLC (hereinafter “CMS”) and JOSEPH BENEDETTO (collectively, “DEFENDANTS”) and any person under their direction or control, including but not limited to, any principals, officers, directors, agents, employees,

representatives, successors, affiliates, subsidiaries, contractors, and assigns who has received actual notice of this Final Consent Judgment.

1.2 Release of Claims. The State of Colorado, Ex. Rel John W. Suthers, Attorney General (hereinafter, the “STATE”), acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA on behalf of the STATE against DEFENDANTS with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA in the Complaint, that arose prior to this date and relating to or based upon the acts or practices which are the subject of the Complaint filed in this action. The STATE agrees that it shall not proceed with or institute any civil action or proceeding based upon the CCPA against DEFENDANTS, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys’ fees, or costs, for any communication disseminated prior to this date which relates to the subject matter of the Complaint filed in this action or for any conduct or practice prior to the date of entry of this Final Consent Judgment which relates to the subject matter of the Complaint filed in this action.

1.3 Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Final Consent Judgment, from pursuing any non-CCPA law enforcement action, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of DEFENDANTS not covered by this lawsuit and Final Consent Judgment or any acts or practices of DEFENDANTS conducted after the date of this Final Consent Judgment.

1.4 Compliance with and Application of State Law. Nothing herein relieves DEFENDANTS of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for the DEFENDANTS to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the State of Colorado.

1.5 Non-Approval of Conduct. Nothing herein constitutes approval by the STATE of the DEFENDANTS’ past or future business practices. DEFENDANTS shall not make any representation contrary to this paragraph.

1.6 Preservation of Private Claims and Relation to Private Settlements. Unless otherwise noted, nothing herein shall be construed as waiver of any private rights, causes of action, or remedies of any person against DEFENDANTS with respect to the acts and practices covered by this Final Consent Judgment.

1.7 Use of Settlement as Defense. DEFENDANTS acknowledge that it is the STATE’s customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the STATE from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the STATE’s enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the

STATE from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the STATE believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Final Consent Judgment shall not be a defense to any such enforcement action.

1.8 Use of Settlement in Business Activity. Under no circumstances shall this Final Consent Judgment or the name of the Attorney General or any of the STATE's employees or representatives be used by DEFENDANTS or any of their employees, representatives, or agents in conjunction with any marketing or other business activity, including responses to consumer complaints. A violation of this paragraph constitutes a knowing and willful violation of this Final Consent Judgment.

1.9 Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Final Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Final Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

1.10 Contempt. The parties understand and agree that any violation of any term or provision of this Final Consent Judgment shall give rise to all contempt remedies available to the Court, including those provided under § 6-1-112(1)(b), C.R.S. (2012).

1.11 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.12 Severability. If any provision(s) of this Final Consent Judgment is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.13 Successors in Interest. The terms and provisions of this Final Consent Judgment may be enforced by the current Colorado Attorney General, and by any of his agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

1.14 Bankruptcy. In the event any of the DEFENDANTS file a petition for bankruptcy within one hundred days of their payments to the STATE and if the STATE must return any portion of the money it has collected pursuant to this Final Consent Judgment to the bankruptcy estate, then a judgment shall enter against DEFENDANTS, jointly and severally, for five hundred thousand dollars (\$500,000) in favor of the STATE.

1.15 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the STATE and by the DEFENDANTS.

II. DEFINITIONS

2.1 The term “CMS Affiliate” means any person who, prior to the date of this Order, has signed up with DEFENDANTS to market medical benefits programs, insurance, or any other health-care related product or service under the auspices of CMS or the affiliate marketing program, “I’ve Got Coverage.”

2.2 The term “Affiliate Marketing Program” means any program, system, or business structure under which any person pays money for marketing products or services or for the opportunity to advertise, market, or promote any product or service. “Affiliate Marketing Program” includes, but is not limited to, DEFENDANTS’ “I’ve Got Coverage” marketing program.

2.3 Unless otherwise stated herein, all terms herein that are defined in the CCPA shall be given the definition provided by the CCPA.

III. PERMANENT INJUNCTION

3.1 This Court PERMANENTLY ENJOINS DEFENDANT BENEDETTO, DEFENDANT CMS, and any other person under their control or at their direction who receives actual notice of this Order, from:

- a. Collecting or receiving any money from any CMS Affiliate, whether such money is paid directly to any DEFENDANT or paid to any third party and passed along, in whole or in part, to any DEFENDANT;
- b. Soliciting or recruiting any person to participate in any Affiliate Marketing Program that relates to medical benefits programs, insurance, or any other health-care related product or service;
- c. Operating, maintaining, directing, participating in, entering into contracts related to, or receiving any payment of any kind in connection with any Affiliate Marketing Program that relates to medical benefits programs, insurance, or any other health-care related product or service;
- d. Knowingly making any false or misleading statement about any medical benefits program, insurance, or any other health-care related product or service;
- e. Receiving commissions or payments of any kind, whether such payments are paid directly to any DEFENDANT or paid to any third party and passed along, in whole or

in part, to any DEFENDANT, in connection with association memberships, medical benefits programs, or insurance.

- f. With regard to any Affiliate Marketing Program not covered by Section 3.1(a)-(c), above, misrepresenting, or assisting others in misrepresenting, expressly or by implication, any material fact, including, but not limited to:
 - i. Purchasers are likely to earn substantial income;
 - ii. Purchasers will receive substantial assistance from marketing coaches;
 - iii. Any material aspect of the nature or terms of any refund, guarantee, or cancellation policy, including, but not limited to, the likelihood of a consumer earning a guaranteed amount of money, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer; and
 - iv. Any material aspect of the performance, efficacy, nature or other characteristic of the program or any goods or services associated therewith.

3.2 This Court AFFIRMATIVELY ORDERS DEFENDANT BENEDETTO, DEFENDANT CMS, and any other person under their control or at their direction who receives actual notice of this Order to:

- a. Pay the amount specified in any and all written guarantees DEFENDANTS have made to any CMS Affiliate, including the “Real Time Leads Guarantee” attached as Exhibit D to the Complaint filed in this matter. DEFENDANTS shall pay the amount specified regardless of whether DEFENDANTS believe the terms of any such guarantee have been met. With regard to the Real Time Leads Guarantee, if the requisite two years have not accrued as of the date of entry of this Order, DEFENDANTS shall pay the amount specified within 10 days after the accrual of the requisite two years.

IV. MONETARY PROVISIONS

4.1 This Court orders DEFENDANTS, jointly and severally, to pay a total amount of \$250,000 in fines, penalties, restitution, damages and costs and fees. All payments under this Section IV shall be held along with any interest thereon in trust by the Attorney General to be used in the Attorney General’s sole discretion for consumer restitution, to reimburse the

STATE for its reasonable costs and attorneys fees, and for future consumer education, consumer fraud and antitrust enforcement efforts. § 6-1-110, C.R.S. (2012).

4.3 Such \$250,000 in fines, penalties, restitution, damages, and costs and fees shall be paid on the following schedule. Beginning 30 days from the entry of this Order, DEFENDANTS shall pay \$200 per month to the Colorado Department of Law. The payments shall be made on the 25th day of each month following entry of this Order until the \$250,000 is paid in full.

All payments shall be made payable to the Colorado Department of Law with a reference to *State v. CMS and Benedetto* (Denver District Court Case No. 12CV1394), and shall be delivered to:

Mark T. Bailey
Assistant Attorney General
Consumer Fraud Unit
1525 Sherman Street – 7th Floor
Denver, Colorado 80203

4.4 For each of the five (5) tax years following entry of this Final Consent Judgment, DEFENDANTS shall provide the STATE a complete copy of all tax returns they file. Such tax returns shall be provided to the STATE within one week of the date of filing. The tax returns shall be mailed to the Colorado Department of Law with a reference to *State v. CMS and Benedetto* (Denver District Court Case No. 12CV1394) and shall be delivered to:

Mark T. Bailey
Assistant Attorney General
Consumer Fraud Unit
1525 Sherman Street – 7th Floor
Denver, Colorado 80203

Failure by any DEFENDANT to provide the STATE a complete copy of tax returns for any of the five (5) years shall constitute knowing and willful violation of this Final Consent Judgment under ¶ 6.1 below, and the provisions of ¶ 6.1 shall apply.

4.5 If, at any time during the five tax years following entry of this Order, any DEFENDANTS' tax returns indicate an annual Adjusted Gross Income of \$50,000 or more in any given year, the amount of DEFENDANTS' monthly payments under this Section IV shall immediately increase to \$400 per month and shall continue at that amount on a monthly basis until such time as tax returns are provided to the STATE indicating an annual Adjusted Gross Income of under \$50,000. If tax returns are provided indicating an annual Adjusted Gross Income of under \$50,000, the monthly payment amount shall return to \$200 per month. In the event that Defendant Joseph Benedetto ("Benedetto") files a joint tax return, only

Benedetto's Adjusted Gross Income will count towards the income thresholds contained in this paragraph.

4.6 If, at any time during the five tax years following entry of this Order, any DEFENDANTS' tax returns indicate an Adjusted Gross Income of \$100,000 or more in any given year, the amount of DEFENDANTS' monthly payments under this Section IV shall immediately increase to \$1,000 per month and shall continue at that amount on a monthly basis until such time as tax returns are provided to the STATE indicating an annual Adjusted Gross Income of under \$100,000. If tax returns are provided indicating an annual Adjusted Gross Income of between \$50,000 and \$100,000, the monthly payment amount shall drop to \$400 per month, and the provisions of ¶ 4.5 shall apply. If tax returns are provided indicating an Adjusted Gross Income of under \$50,000, the monthly payment amount shall return to \$200 per month. In the event that Benedetto files a joint tax return, only Benedetto's Adjusted Gross Income will count towards the income thresholds contained in this paragraph.

4.7 Plaintiff shall retain the right to complete all post-judgment discovery allowed by Colorado law, including discovery under Colorado Rule of Civil Procedure 69.

4.8 In the event DEFENDANTS fail to make full payment of any scheduled monthly payment under this Section IV, the \$250,000 judgment will accelerate upon the STATE's written notice to DEFENDANTS and the Court of such failure and subject to a 10-day opportunity to cure. If DEFENDANTS fail to cure within 10 days after notice is given, all unpaid amounts thereof will be due and payable to the STATE immediately

4.9 DEFENDANTS agree to cooperate with all investigations and other proceedings that the STATE has brought or may bring relating to the medical benefits programs previously offered by DEFENDANTS or the Ivegotcoverage Affiliate Marketing Program.

Such cooperation includes:

- a. Producing documents, records, electronic records, or any other tangible things or appearing at an investigative hearing in response to a subpoena or other written request issued by the STATE; and
- b. Accepting a subpoena from the STATE without need for service of process.

V. REPRESENTATIONS AND WARRANTIES

5.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving DEFENDANTS of their respective obligations to comply with all state and federal laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

5.2 Due to the public-interest nature of the STATE's claims in this matter, DEFENDANTS hereby specifically agree and stipulate that the monetary obligation imposed hereunder constitutes a debt for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit, is not compensation for actual pecuniary loss and is specifically non-dischargeable under 11 U.S.C.A. § 523(a)(7).

5.3 DEFENDANTS acknowledge that they have thoroughly reviewed this Final Consent Judgment with their counsel, that they understand and agree to its terms, and that they agree that it shall be entered as an Order of this Court.

5.4 Each of the non-Court signatories to this Final Consent Judgment warrants and represents that he or she has authority to agree to this Final Consent Judgment on behalf of the specified parties.

5.5 The parties expressly state and agree that a primary basis for Plaintiff's decision to enter into this Final Consent Judgment is the representation by DEFENDANTS that they do not currently have funds to pay a significant judgment in this matter. Defendant Benedetto completed a sworn financial affidavit on May 7, 2012 (hereinafter, "Affidavit"). The Affidavit bears the bate label CMS4491-4582 and is in the possession of all undersigned counsel. If, following the date of entry of this Final Consent Judgment, the STATE determines that the Affidavit contains any false statement or any material omission, or that DEFENDANTS have made any false statement to the STATE in connection with the Affidavit, such false statement or material omission shall constitute a knowing and willful violation of this Final Consent Judgment under ¶ 6.1 below, and the provisions of ¶ 6.1 shall apply.

IV. VIOLATIONS OF CONSENT JUDGMENT

6.1 Proof by a preponderance of the evidence of a violation of any of the terms of this Final Consent Judgment shall constitute a prima facie violation of the CCPA under C.R.S. § 6-1-110(2). Upon any violation of any of the terms of this Final Consent Judgment, the STATE shall be entitled to file a civil action in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Final Consent Judgment. DEFENDANTS consent to a joint and several judgment in the amount of \$750,000 for any knowing or willful violation of any term of this Final Consent Judgment. In any action brought by the STATE under this paragraph, DEFENDANTS consent to personal and subject matter jurisdiction in the District Court for the City and County of Denver.

This Consent Judgment Concerning the DEFENDANTS, signed and agreed to this 4th day of September, 2012.

/s/ Claude C. Wild, III

Claude C. Wild III, #7230
Cuneyt A. Akay, #39085
GREENBERG TRAUERIG, LLP

/s/ Joseph Benedetto

JOSEPH BENEDETTO, Owner and
President of CONSOLIDATED MEDICAL
SERVICES, LLC

Attorneys for DEFENDANTS In all respects, on
behalf of the Plaintiff the State of Colorado, *ex rel.*
JOHN W. SUTHERS, Attorney General and

Mark T. Bailey

MARK T. BAILEY*, Reg. No. 36861
Assistant Attorney General
JAY SIMONSON*, Reg. No. 24077
First Assistant Attorney General
Consumer Fraud Unit
Consumer Protection Section
Office of the Colorado Attorney General
Attorneys for Plaintiffs

*Counsel of Record

SO ORDERED and SIGNED this _____
day of _____, 2012.

BY THE COURT:

District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court: CO Denver County District Court 2nd JD

Judge: Michael Anthony Martinez

File & Serve

Transaction ID: 46247394

Current Date: Sep 06, 2012

Case Number: 2012CV1394

Case Name: ST OF COLO et al vs. CONSL MEDICAL SERV LLC et al

Court Authorizer: Martinez, Michael Anthony

/s/ **Judge Martinez, Michael Anthony**