DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: Jun 24 2009 1:57PM MDT Filing ID: 25811884 Review Clerk: Orathay Khiem
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. BASAD, INC., PELEG FORMAN, individually, BATIA "BELLI" FORMAN, individually, SHARON BITON, individually, and MICHAEL BITON, individually, Defendants.	▲ **COURT USE ONLY** ▲
Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ALISSA HECHT GARDENSWARTZ, 36126* Assistant Attorney General alissa.gardenswartz@state.co.us JAY B. SIMONSON, 24077* First Assistant Attorney General jay.simonson@state.co.us 1525 Sherman Street, 4th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record	Case No.: **08CV9717** Div. 9

CONSENT DECREE

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

Accordingly IT IS ORDERED that:

GENERAL PROVISIONS

1. Scope of Consent Judgment. The injunctive provisions of this Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, § § 6-1-101 *et. seq.*, C.R.S. (2008) ("CCPA").

2. Release of Claims.

(a) The State acknowledges by its execution hereof that this Consent Judgment constitutes a complete settlement and release of all claims on behalf of the STATE OF COLORADO ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL ("STATE") against Defendants BASAD, Inc., and PELEG FORMAN, BATIA FORMAN, SHARON BITON AND MICHAEL BITON, in their individual capacity (hereinafter referred to collectively as the "DEFENDANTS" unless otherwise specified) with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted under the above-cited consumer protection statutes 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 above-cited consumer protection statutes against the 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 Amended Complaint filed in this action or for any conduct or practice prior to the date of this Order which relates to the subject matter of the Complaint filed in this action. Notwithstanding the foregoing, the STATE may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by the DEFENDANTS.

(b) DEFENDANTS are entering into this Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. DEFENDANTS' execution of this Consent Judgment is not and shall not be considered an admission by the DEFENDANTS.

3. Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Consent Judgment, or from pursuing any law enforcement action with respect to the acts or practices of DEFENDANTS not covered by this lawsuit, Consent Judgment or any acts or practices of DEFENDANTS conducted after the Effective Date of this Consent Judgment.

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

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

6. Personal Liability. Defendants expressly deny any wrongdoing on their part. The STATE agrees that there is no finding herein of personal liability alleged by the STATE in its Complaint or stated below. Execution of this Consent Judgment by Defendants is not and shall not be considered an admission by Defendants.

7. 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 Consent Judgment. This Consent Judgment, however, specifically provides for execution of a written release by restitution recipients as a condition precedent to receipt of restitution, in accordance with Paragraph 21, below.

8. 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 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 Consent Judgment shall not be a defense to any such enforcement action.

9. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this 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 Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

10. Public Record. Pursuant to § 6-1-112(2), C.R.S. (2007), this Consent Judgment shall be a matter of public record.

11. Contempt. The parties understand and agree that any violation of any term of this Consent Judgment shall give rise to the contempt remedies and penalties provided under § 6-1-112(2), C.R.S. (2007).

12. Execution in Counterparts. This Consent Judgment may be executed in counterparts.

FACTUAL ALLEGATIONS

13. The STATE alleges in its Complaint that Defendant violated the CCPA through deceptive advertising and deceptive sales practices of their locksmith services.

14. The STATE alleges in its Complaint that Defendants misrepresented the price of their locksmith services and intentionally misled consumers to believe that the price for locksmith services would be less than the actual price. Specifically, Defendants routinely told consumers that the cost of their locksmith services was $55 when in fact the actual cost of locksmith services was twice that amount. Defendants, in response to consumer inquiries as to price, would deceptively state that the cost was $55 for a "service call" while failing to disclose that additional charges would be incurred.

15. The STATE alleges in its Complaint that Defendants misled consumers through deceptive advertising to believe that Defendants had local offices when in fact Basad has only the one address located at 7120 E. Orchard Road, Englewood, Colorado 80111.

16. The STATE alleges in its Complaint that Defendants falsely advertised an affiliation with the Associated Locksmiths of America (ALOA) when none existed.

17. Although not alleged in its Complaint, the State now has reason to belief that the Defendants have advertised that a "twenty-minute response time" is a facet of the Defendants' locksmith services. There are circumstances where consumers have waited more than 20 minutes for locksmith services.

18. Defendants make no admissions and nothing herein shall be deemed an admission. Defendant has taken affirmative steps, both prior to this state investigation and thereafter, including, but not limited to, the recording of phone calls, modifying advertising and instructing personnel to provide greater clarity to the consumer and this settlement reflects, in part, those improvements.

PERMANENT INJUNCTION

19. DEFENDANTS shall be enjoined from representing, including by implication or inference;

a. that they have an address other than the one in Englewood, Colorado or one that matches the home address of one of their technicians/locksmiths.

b. in any written advertisement, that they will respond to a service call within twenty minutes or any other specific period of time. This injunction does not prevent a technician from orally providing an estimate of his/her time of arrival as long as such estimate is made in good faith.

c. that Defendants are members of Associated Locksmiths of America (ALOA), either by express representation or by implication through use of the ALOA insignia or shield, unless Defendants are members of ALOA.

d. that Defendants or any of its contracted locksmiths are licensed, unless such Defendants or any of its contracted locksmiths are licensed at locksmiths by any jurisdiction providing such licensure.

20. Defendants shall affirmatively;

e. disclose that any of their dba(s) listed within any one advertising media are the same company so as to not mislead consumers into thinking that they are telephoning competing businesses when that is not the case.

f. disclose in the initial sales call that in addition to the service fee there will be additional charges. These additional charges may either be described as "labor" or "a lock out fee." After a consumer has been contacted by a technician associated with Defendants and, a consumer asks what the lockout fee or the labor is for their car lockout, the technician must affirmatively disclose what is the average amount charged in additional fees for a car lockout or must provide a reasonable estimate for the make, model, and year of car in question..

g. Continue to record conversations between consumers and representatives of the Defendant BASAD for one year.

h. maintain a customer service unit that will address consumer complaints.

i. put in place a program for creating a written record of all consumer complaints and any disposition (i.e. settlement offers made) of such complaints which written record will be available for Plaintiff's inspection and review upon reasonable notice.

MONETARY PROVISIONS

21. Defendants agree to pay or cause to be paid to the Department of Law a total compensatory payment of One Hundred Thousand dollars ($100,000.00). The $100,000 shall be payable in four installments of $25,000 commencing on July 2, 2009. Ninety days thereafter, the Defendants shall be obligated to pay or cause to be paid an additional $25,000 and said payment shall be due on September 30, 2009. The third payment of $25,000 shall be due on December 29, 2009, with the fourth and final $25,000 payment due on March 29, 2010. These compensatory payments and any interest thereon shall be held by the Attorneys General in trust to be used, first, for consumer restitution to be distributed as described below and, second, for reimbursement of the state's costs and attorneys' fees incurred by the Attorneys General in this matter, and third for future consumer education, consumer protection, or antitrust enforcement efforts.

22. The Colorado Attorney General shall pay pro rata consumers restitution in a manner that he, in his sole discretion, deems appropriate from this payment. The Colorado Attorney General may give preference to those consumers who have (to the

point of excluding those consumers who have not) filed written complaints received by the Attorney General's Office on or before June ____, 2009.

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

SO ORDERED and SIGNED this _____ day of _____, 2008.

BY THE COURT:

_____
Honorable Shelley I. Gilman
Denver County District Court Judge

Signed and agreed to this 22 day of June, 2009.

Peleg Forman, Individually

Batia Forman, Individually

Michael Biton, Individually

Sharon Biton, Individually

Michael Biton and Batia Forman
For BASAD, Inc.

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

JAY B. SIMONSON, 24077*
First Assistant Attorney General
Consumer Fraud Unit
Consumer Protection Section

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As to form, on behalf of the Defendants

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