



Granted

The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

Martin Egelhoff
District Court Judge
Date of Order attached

FILED Document
CO Denver County District Court 2nd JD
Filing Date: Nov 29 2012 03:23PM MST
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DISTRICT COURT, CITY AND COUNTY OF DENVER,
COLORADO
1437 Bannock Street, Room 256
Denver, Colorado 80202

STATE OF COLORADO *ex rel.* John W. Suthers,
Attorney General,

Plaintiff,

v.

Jennifer Proffitt-Payne, Cody Payne, Great Lakes
Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.;
Rivista, Inc.; American Cash Awards, Inc.; Monitoring
Services Network, Inc.; Youth Incentive Marketing, Inc.;
Direct Youth Marketing; Magazines, Inc.; and Fun Sales,
Inc.

Defendants.

▲ COURT USE ONLY ▲

Case No.:

2012CV2479

**ORDER OF DEFAULT JUDGMENT AND ENTRY OF PERMANENT INJUNCTION
AGAINST DEFENDANTS JENNIFER PROFFITT-PAYNE, CODY PAYNE, GREAT
LAKES CIRCULATION, INC.; D2D CONSULTING, LLC; REVISTE, INC.; RIVISTA,
INC.; AMERICAN CASH AWARDS, INC.; MONITORING SERVICES NETWORK,
INC.; YOUTH INCENTIVE MARKETING, INC.; MAGAZINES, INC.; AND FUN
SALES, INC.**

The Court, having reviewed the entire record in this matter, the pleadings, motions, including *Plaintiff's Motion for Default Judgment* and the supporting affidavits, and being fully advised in the premises,

FINDS and CONCLUDES that default judgment should be entered for Plaintiff the State of Colorado *ex rel.* John W. Suthers, Attorney General, against Defendants Jennifer Proffitt-Payne, Cody Payne, Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; American Cash Awards, Inc.; Monitoring Services Network, Inc.; Youth Incentive Marketing, Inc.; Magazines, Inc.; and Fun Sales, Inc.

1. This Court has subject matter jurisdiction in the matter presented herein by virtue of § 6-1-110(1), C.R.S. (2012). The Court has personal jurisdiction over Defendant Cody Payne, who was served process on behalf of himself and his wife, Defendant Jennifer Proffitt-Payne on May 1, 2012. Through Defendants Payne and Proffitt-Payne, service was also effectuated upon Defendants Great Lakes Circulation, Inc. (“GLC”); D2D Consulting, LLC (“D2D”); Reviste, Inc.; Rivista, Inc.; American Cash Awards, Inc. (“ACA”); Monitoring Services Network, Inc. (“MSN”); Youth Incentive Marketing, Inc. (“YIM”); Magazines, Inc.; and Fun Sales, Inc. (collectively, “corporate Defendants”).

2. Defendants conducted a portion of transactions in violation of the CCPA in the City and County of Denver during the relevant timeframe. Therefore, venue has been considered and is proper in the county of Denver, Colorado, pursuant to § 6-1-103, C.R.S., and Colo. R. Civ. P. 98 (2012).

3. Pursuant to Rule 121 § 1-14, Defendants Jennifer Proffitt-Payne and Cody Payne are not minors, incapacitated persons, officers or agencies of the state, nor in the military.

4. On June 11, 2012, Defendant Jennifer Proffitt-Payne filed an Answer to the Complaint, *pro se*. On June 12, 2012, Defendant Payne filed a “Response” to the Complaint, *pro se*.

5. On July 29, 2012, the Court entered default against corporate Defendants GLC, D2D, Reviste, Inc., Rivista, Inc.; ACA, MSN, YIM, and Fun Sales, Inc.¹

6. On July 30, 2012, pursuant to Civil Access Pilot Project (“CAPP”) Rule 7.1, an Initial Case Management Conference was convened. Although Plaintiff properly provided all Defendants notice of the Conference, no Defendant appeared. The Court rescheduled the Conference Defendants for August 16, 2012. Again, despite proper notice being provided by Plaintiff to all Defendants, no Defendant appeared.

7. Further, no Defendant has complied with CAPP Rule 3.3, which requires that Defendants file certain initial disclosures with the Court within 21 days of Defendants’ service of responsive pleadings. Plaintiff has informed the Court that Plaintiff expressly reminded Defendants Payne and Proffitt-Payne of their obligation to do so on July 18, 2012.

8. On August 22, 2012, the Court entered default against Defendants Jennifer Proffitt-Payne and Cody Payne.

9. Plaintiff is in compliance with C.R.C.P Rule 55, having provided notice of its application for default judgment to Defendants on the date of filing.

A. PERMANENT INJUNCTION

¹ This Court granted the State’s Motion to Dismiss Defendant Direct Youth Marketing on July 29, 2012.

10. This Court is expressly authorized to issue an injunction to enjoin ongoing violations of the CCPA by § 6-1-110(1), C.R.S (2011):

(1) Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

§ 6-1-110(1), C.R.S.

11. Plaintiff has shown to this Court probable cause that:

- a) Defendants have routinely misled consumers to believe that they would be able to obtain a refund for orders placed with their sales crews;
- b) Defendants have routinely failed to deliver the magazines ordered by consumers; and
- c) Defendants have routinely misrepresented their affiliation with various charities and entities, including hospitals, schools, and the military.

12. Plaintiff has shown and satisfied the necessary factors to obtain a permanent injunction: success on the merits; a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; lack of a plain, speedy, and adequate remedy at law; no disservice to the public interest; and balance of equities in favor of the injunction. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004), *citing Rathke v. MacFarlane*, 648 P.2d 648, 653-54 (Colo.1982); *see also, Baseline Farms Two, LLP v. Hennings*, 26 P.3d 1209, 1212 (Colo. App. 2001), *citing Lloyd A. Fry Roofing Co. v. State Department of Air Pollution*, 191 Colo. 463, 553 P.2d 200 (1976) (supporting the proposition that when the Colorado Attorney General seeks an injunction to enforce state laws affecting the public interest, the Attorney General is not required to plead or prove immediate or irreparable injury).

13. Plaintiff has no adequate remedy at law and the remedy of a permanent injunction is appropriate in the circumstances of this case.

14. This Court further finds that Defendants will suffer no undue hardship by the entry of a permanent injunction since Defendants have no right to continue to engage in unlawful and deceptive trade practices in the State of Colorado or to collect money from consumers as a result of such unlawful and deceptive conduct in violation of the CCPA. Further, Defendants have no right to unjustly benefit from such deceptive trade practices. Without an injunction, Plaintiff will be unable to adequately protect the public from Defendants' unlawful activities.

15. Therefore, this Court ORDERS that all Defendants and any other person under their control or at their direction, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who receives actual notice of the Order, are PERMANENTLY ENJOINED from engaging in, directing, assisting with, or participating in door-to-door magazine sales in the State of Colorado. This expressly includes operating a company based in Colorado that sends door-to-door sales crews to other states.

B. RESTITUTION, UNJUST ENRICHMENT, CIVIL PENALTIES, AND ATTORNEY FEES AND COSTS

16. The CCPA's broad legislative purpose is to "provide prompt, economical, and readily available remedies against consumer fraud." *Western Food Plan, Inc. v. District Court in and for the City and County of Denver*, 598 P.2d 1038, 1041 (Colo. 1979). Accordingly, the CCPA provides that this Court may make such judgments as may be necessary to "completely compensate or restore to the original position of any person injured by means" of a deceptive trade practice or "to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice." C.R.S. § 6-1-110(1).

17. This Court finds that Plaintiff's *Motion for Default Judgment* and accompanying affidavit of Investigator Rebecca Wild adequately establish the amount of restitution and unjust enrichment for which judgment should be entered. The Court finds that Defendants Jennifer Proffitt-Payne and Cody Payne are jointly and severally liable for restitution and/or unjust enrichment in the amount of **\$25,148.71**, and Jennifer Proffitt-Payne is further liable for restitution and/or unjust enrichment in the amount of **\$23,792.12**.

18. The CCPA further provides for an award of civil penalties:

6-1-112 Civil penalties. (1) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this subsection (1), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

19. In determining the amount of a civil penalty award, this Court considers the following concepts: (a) The good or bad faith of the defendant; (b) the injury to the public; (c) the defendant's ability to pay; and (d) the desire to eliminate the benefits derived by violations of the Colorado Consumer Protection Act. *State v. May Dept. Stores Co.*, 849 P.2d 802 (Colo. App. 1992).

20. Based upon Plaintiff's *Motion for Default Judgment* and the accompanying affidavit of Investigator Wild, the Court finds that at least 385 CCPA violations are directly attributable to both Defendants Payne and Proffitt-Payne, and that an additional 378 CCPA violations are directly attributable to Defendant Proffitt-Payne.

21. Based on the record, the Court finds that Defendants' violations of the CCPA were deliberate, knowing, done in bad faith, and repeated in nature. Defendants Proffitt-Payne and Payne knew the sales crews in their employ were making false statements to consumers to make sales, and yet did nothing to correct this deception. Further, Defendant Proffitt-Payne was responsible for ensuring that magazines were properly provided and refunds properly issued, and yet repeatedly failed to provide magazines as ordered by customers and issue refunds according to the stated refund policy. Defendant Payne also knew of false statements being made by his sales crews, did nothing to correct the deception, and routinely failed to provide refunds to customers who timely made their requests.

22. The Court finds that an award of civil penalties in the amount of **\$385,000** against Defendant Payne and an award of civil penalties in the amount of **\$500,000** against Defendant Proffitt-Payne are proper in this case.

23. The Attorney General is entitled to costs and attorney fees pursuant to Colo. Rev. Stat. § 6-1-113(4).

24. Based on the affidavits of attorneys Mark T. Bailey and Virginia Sciabbarrasi submitted with Plaintiff's *Motion for Default Judgment*, the Court finds that an award of attorneys fees in the amount of **\$60,000** is proper, and that Defendants Payne and Proffitt-Payne are jointly and severally liable for this amount. Plaintiff is not seeking its costs.

25. This Court therefore ENTERS final judgment in favor of Plaintiff in the amount of **\$993,940.83**. Such judgment shall be apportioned as follows:

- Defendant Cody Payne and Defendant Jennifer Proffitt-Payne are jointly and severally obligated in the amount of **\$85,148.71** (\$25,148.71 for restitution/unjust enrichment and \$60,000 for attorneys fees);
- Defendant Jennifer Proffitt-Payne is obligated in the amount of **\$523,792.12** (\$23,792.12 in for restitution/unjust enrichment and \$500,000 in civil penalties).

26. Defendant Cody Payne is obligated in the amount of **\$385,000** in civil penalties.

Dated this ____ day of _____, 2012.

BY THE COURT:

District Judge

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

Court: CO Denver County District Court 2nd JD

Judge: Martin Foster Egelhoff

File & Serve

Transaction ID: 46617436

Current Date: Nov 29, 2012

Case Number: 2012CV2479

Case Name: ST OF COLO et al vs. PROFFITT-PAYNE, JENNIFER et al

Court Authorizer: Egelhoff, Martin Foster

/s/ **Judge Egelhoff, Martin Foster**