



**GRANTED**

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: Mar 26, 2012**

**Robert L. McGahey, Jr.  
District Court Judge**

**ET FILED Document**  
DATE OF ORDER INDICATED ON ATTACHMENT  
**CO Denver County District Court 2nd JD**  
**Filing Date: Mar 26 2012 11:33PM MDT**  
**Filing ID: 43312934**  
**Review Clerk: Sara Rannetsberger**

**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.

Raymond Makatura; Robert Makatura; Lucille Makatura; Lucille Aragon; Dorothy Gonzales; Henry Aragon; Nicholas Harper; Rita Rohleder; Michael Brian Patterson; Rocky Mountain Readers Service, Inc; Magazine/One, LLC.; Promo Readers Service, Inc; Readers Choice Service Inc; All City Circulations, Inc.; Magazine Connection, LLC; Magazine Club, LLC; Readers Source, LLC; Haragon Holdings, LLC; Haragon Holdings, Inc.; Family Publications, Inc; Increase Publications, LLC; I.N.C. & Associates; N R And Assoc. Inc.; Neighborhood Readers and Associates; National Readers and Associates; First Premier Subscriber Services, Inc; Crown Marketing, Inc.; Class Media, INC; H.J.H. Limited Liability Company; World Wide Readers Service, Inc.; Consumer Network of America, LLC; Consumers of America

**Defendants.**

Attorneys for Plaintiff:  
JOHN W. SUTHERS, Attorney General  
MARK T. BAILEY\*, Assistant Attorney General, Reg. No. 36861  
ALISSA HECHT GARDENSWARTZ\*, Senior Assistant Attorney General, Reg. No. 36126  
JAY SIMONSON\*, First Assistant Attorney General, Reg. No. 24077  
1525 Sherman Street, 4th Floor  
Denver, CO 80203  
(303) 866-5079  
(303) 866-4916 Fax  
\*Counsel of Record

**▲ COURT USE ONLY ▲**

Case Number: 11CV6866

Courtroom: 409

## CONSENT JUDGMENT AS TO ARAGON DEFENDANTS

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 DEFENDANT HENRY ARAGON and DEFENDANTS MAGAZINE CONNECTION, LLC; MAGAZINE CLUB, LLC; READERS SOURCE, LLC; HARAGON HOLDINGS, LLC; HARAGON HOLDINGS, INC. (hereinafter collectively referred to as the "ARAGON DEFENDANTS") and any person under the direction or control of any ARAGON DEFENDANT, 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 Court's Order.

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 the ARAGON DEFENDANTS, their owners, employees and former employees, 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 the ARAGON 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 Liability. Both parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. The ARAGON DEFENDANTS expressly deny the allegations in the STATE's Complaint and the parties agree that the ARAGON DEFENDANTS' agreement to enter into this judgment is not an admission of fault.

1.4 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 the ARAGON DEFENDANTS not covered by this lawsuit and Final Consent Judgment or any acts or practices of the ARAGON DEFENDANTS conducted after the Effective Date of this Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves the ARAGON DEFENDANTS of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for the ARAGON 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.

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

1.7 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 the ARAGON DEFENDANTS with respect to the acts and practices covered by this Final Consent Judgment.

1.8 Use of Settlement as Defense. The ARAGON 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.

1.9 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 the ARAGON DEFENDANTS or any of their employees, representatives, or agents in conjunction with any marketing or other business activity, including in responses to consumer complaints or as an endorsement of any conduct, past or present, by the ARAGON DEFENDANTS. However, nothing in this paragraph shall prohibit the ARAGON DEFENDANTS from otherwise commenting on this Consent Judgment, changes to their business practices or the resolution of this case. Upon notice and proof provided for in Section 6 below, a violation of this paragraph constitutes a knowing and willful violation of this Final Consent Judgment.

1.10 Retention of Jurisdiction. Except as provided by Section 3.6 below, 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.

1.11 Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment as set forth in Section 6 and Section 4.5 below shall give rise to all contempt remedies available to the Court, including those provided under § 6-1-112(1)(b), C.R.S. (2012).

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

1.13 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.

1.14 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 duly authorized 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.

1.15 Bankruptcy. In the event any of the ARAGON 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 the ARAGON DEFENDANTS, jointly and severally, for one million dollars (\$1,000,000) in favor of the STATE.

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

## **II. DEFINITIONS**

2.1 Unless otherwise stated herein, the term "Magazine Solicitations" means the marketing, selling, promoting, or advertising in any form, including over the Internet and over the telephone, of magazines or magazine-subscription services. "Magazine Solicitations" does not mean any business relations that the ARAGON DEFENDANTS may have with non-consumer business entities, including payment processors and subscription fulfillment processors.

2.2 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 Effective 60 days from the date of this order, this Court PERMANENTLY ENJOINS the ARAGON DEFENDANTS, and any other person under their control or at their direction who receives actual notice of this Order, from engaging in Magazine Solicitations in the State of Colorado.

3.2 Effective 60 days from the date of this order, this Court PERMANENTLY ENJOINS DEFENDANT HENRY ARAGON from operating, controlling, directing, receiving compensation from, having an ownership interest in, or receiving payment of any kind from any person or entity that engages in Magazine Solicitations in the State of Colorado. This expressly includes any person or entity that:

- a. solicits consumers in Colorado or otherwise advertises in Colorado;
- b. maintains any office in Colorado, including call centers; or
- c. has operations that are controlled or directed, in whole or in part, by any person located in Colorado.

3.3 Effective immediately, in connection with any Magazine Solicitations by the ARAGON DEFENDANTS that otherwise comply with this Order, the Court PERMANENTLY ENJOINS the ARAGON DEFENDANTS from:

- a. Representing or implying that the solicitor is affiliated with or calling on behalf of the publisher or distributor of a particular magazine if such is not the case;
- b. Representing that the solicited person is a “preferred customer” who was contacted for some special reason other than as a possible magazine purchaser if such is not the case;
- c. Representing to the solicited person that the solicitor is lowering the total cost of an existing subscription, lowering periodic payments, or saving the solicited person money off an existing subscription if such is not the case;
- d. Representing to the solicited person that the solicitor is putting a “privacy block” on the solicited person’s account, or representing or implying that the solicitor needs to know the solicited person’s CVV card number for any reason other than to facilitate a purchase charge against the account;
- e. Representing or implying to the solicited person that the solicitor is extending an existing subscription rather than placing a new order or making a new sale for the same or a different magazine, if such is not the case;

f. In connection with any order for a magazine subscription, failing to specifically state to the solicited person the total cost of the purchase, the number of payments, and the amount of each payment; and,

g. Representing or implying that the solicited person will receive a gift or bonus, if such is not the case.

3.4 In the event that a customer cancels or indicates a desire to cancel his or her order by contacting the ARAGON DEFENDANTS in writing or by closing a credit card or bank account to put an end to disputed charges, the ARAGON DEFENDANTS may not collect any amount in excess of what the ARAGON DEFENDANTS have previously paid for magazines ordered on behalf of such customer plus 20% of this amount. The ARAGON DEFENDANTS shall confirm every order in a writing to the customer that details the magazines ordered, the length of each subscription, the amount of any monthly payment, and the total amount owed by the customer. This writing shall inform the customer that any cancellation must be in writing and must provide a website, email address, fax number and street addresses where the customer may send such cancellations. If a customer attempts to cancel over the telephone, the ARAGON DEFENDANTS shall inform such customer that all cancellations must be in writing and inform the customer where the written cancellation should be sent. In the event the ARAGON DEFENDANTS sell, assign, or otherwise transfer a customer account to a third-party who will collect on the account, the ARAGON DEFENDANTS shall provide such third party a copy of this Final Consent Judgment and inform such third party that the cancellation policy set forth in this Section 3.4 applies to any and all orders originated by any ARAGON DEFENDANT.

3.5 It is agreed and understood that in the event a present or future customer of the ARAGON DEFENDANTS moves to the State of Colorado after placing an order with the ARAGON DEFENDANTS, it shall not be a violation of Section 3.1 or 3.2 for the ARAGON DEFENDANTS to continue a business relationship with such consumer.

3.6 Notwithstanding the ARAGON DEFENDANTS' consent to jurisdiction under Section 6.3 of this Final Consent Judgment, to the extent the State seeks to enforce any violation of Section 3.3 or Section 3.4 that does not occur in the State of Colorado, the ARAGON Defendants reserve their rights to challenge the jurisdiction of this Court to enforce such a violation.

#### **IV. MONETARY PROVISIONS**

4.1 This Court orders the ARAGON DEFENDANTS, jointly and severally, to pay a total amount of \$275,000 in fines, penalties, restitution, damages and costs and fees. The ARAGON DEFENDANTS shall make payments of this amount on the following schedule: \$50,000 within 30 days of the entry of this Final Consent Judgment, and \$45,000 annually each of the following five years on the anniversary of entry of this Final Consent Judgment. If the anniversary of the entry of this Final Consent Judgment occurs on a weekend or holiday, the payment shall be made on the next business day.

4.2 All civil penalties, restitution, and costs and fees shall be paid by the ARAGON DEFENDANTS to the Colorado Department of Law to be held along with any interest thereon in trust for the benefit of the consumer protection section, 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).

All payments shall be made payable to the Colorado Department of Law with a reference to "*State v. Raymond Makatura et al. Settlement, Aragon Defendants,*" and shall be delivered to:

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

4.3 Within 60 days of this order, the ARAGON DEFENDANTS shall provide complete contact and account information for all consumers who paid money to the ARAGON DEFENDANTS in the years 2010 and 2011. Such information shall include the date of any order, the magazines ordered, the account balance, and the last known mailing address and telephone number(s) of the consumer. The ARAGON DEFENDANTS are not obligated to provide this information for customers who are current in their payments for subscriptions at the time the information is provided.

4.4 If requested by the ARAGON DEFENDANTS, the State shall provide names and amounts of any restitution paid to individual consumers.

4.5 Failure to make any payment under Section 4.1 will constitute a knowing and willful violation of this Final Consent Judgment and contempt of this Court. In the event the ARAGON DEFENDANTS fail to make any payment under Section 4.1, the STATE shall provide the ARAGON DEFENDANTS written notice of default and provide the ARAGON DEFENDANTS with 15 days to cure the default. If the ARAGON DEFENDANTS fail to cure the default, the STATE may petition the Court alleging a violation of this Final Consent Judgment. In any such action, and notwithstanding the provisions of Section 6, below, the ARAGON DEFENDANTS consent to a joint and several judgment in the amount of \$1,000,000 for any failure to make a payment under Section 4.1.

## **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 the ARAGON 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, the ARAGON 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 The ARAGON 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 Consent Judgment on behalf of the specified parties.

5.5 Upon receipt of reasonable notice, the ARAGON DEFENDANTS agree to cooperate with all investigations and other proceedings that the STATE has brought or may bring, including the present civil law enforcement action and any contempt or other proceeding arising out of this Final Consent Judgment. Such cooperation includes:

- a. Appearing at the request of the STATE for hearings, depositions, and trial, and providing testimony in any form during the pendency of this action and in any post-trial proceedings. All such testimony shall be truthful;
- b. Producing documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the STATE; and
- c. Accepting a subpoena from the STATE without need for service of process.

The ARAGON DEFENDANTS reserve the right to object to the scope and reasonableness of any subpoena that requests information or materials that are not relevant to this case or an alleged violation of this Final Consent Judgment or any subpoena that does not provide the required notice.

## **VI. VIOLATIONS OF CONSENT JUDGMENT**

6.1 In the event the STATE receives evidence that the ARAGON DEFENDANTS have violated this Final Consent Judgment, the STATE shall make its best efforts to provide the ARAGON DEFENDANTS written notice of default and provide the ARAGON DEFENDANTS with 15 days to cure the violation. If the ARAGON DEFENDANTS fail to cure the violation, the STATE may petition the Court alleging a violation and seek remedies under Sections 6.2 and 6.3 of this Final Consent Judgment. If the STATE receives evidence of more than five violations of this Final Consent Judgment, the STATE may petition the Court under Sections 6.2 and 6.3 for remedies regardless of whether the ARAGON DEFENDANTS have cured such violations.



6.2 Following the notice required in Section 6.1, the STATE may file a petition with this Court alleging violations of this Final Consent Judgment. Following notice and hearing on the STATE's petition and a finding by the Court that the violation was a knowing and willful violation, the Court may impose the penalties set forth in Section 6.3. Such a finding shall constitute a *prima facie* violation of the CCPA under C.R.S. § 6-1- 110(2).

6.3 Upon a finding by this Court that the ARAGON DEFENDANTS have violated any of the terms of this Final Consent Judgment, the STATE shall be entitled to seek an injunction or other appropriate order from the Court to enforce the provisions of this Final Consent Judgment. The ARAGON DEFENDANTS consent to a joint and several judgment in the amount of \$1,000,000 for any knowing or willful violation of any term of this Final Consent Judgment. The parties agree that the term "knowing" means that the ARAGON DEFENDANTS knew or should have known they were violating this Final Consent Judgment.

6.4 In any action brought by the STATE under this paragraph, except for an action alleging a violation of Section 3.3 or Section 3.4, the ARAGON DEFENDANTS consent to personal and subject matter jurisdiction in the District Court for the City and County of Denver.

SO ORDERED and SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
District Court Judge

This Consent Judgment Concerning the ARAGON DEFENDANTS, signed and agreed to this 21st day of March, 2012.

Michael J. Carrigan

Michael J. Carrigan, Reg. No. 24061  
Gregory E. Goldberg, Reg. No. 26065  
Jason A. Crow, Reg. No. 41389  
HOLLAND & HART LLP  
555 17th Street  
Suite 3200  
Denver, CO 80202-3979  
Telephone: 303-295-8000  
Facsimile: 303-295-8261

Henry Aragon

HENRY ARAGON,  
Owner and President of MAGAZINE  
CONNECTION, LLC; MAGAZINE CLUB,  
LLC; READERS SOURCE, LLC;  
HARAGON HOLDINGS, LLC; HARAGON  
HOLDINGS, INC., on behalf of himself and  
the above-listed entities

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 \*  
ALISSA HECHT GARDENSWARTZ\*, Reg.  
No. 36126  
Assistant Attorneys 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

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

**Court:** CO Denver County District Court 2nd JD

**Judge:** Robert Lewis McGahey

**File & Serve**

**Transaction ID:** 43231324

**Current Date:** Mar 26, 2012

**Case Number:** 2011CV6866

**Case Name:** ST OF COLO et al vs. MAKATURA, RAYMOND et al

**Court Authorizer:** Robert Lewis McGahey

*/s/ Judge Robert Lewis McGahey*