



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: Nov 26, 2012

Robert L. McGahey, Jr.
District Court Judge

FILED Document
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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.

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.

▲ COURT USE ONLY ▲

Case Number: 11CV6866

Courtroom: 409

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANTS ROBERT MAKATURA; RAYMOND MAKATURA; LUCILLE MAKATURA; RITA ROHLEDER; ROCKY MOUNTAIN READERS SERVICE, INC; MAGAZINE/ONE, LLC.; PROMO READERS SERVICE, 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; CONSUMER NETWORK OF AMERICA, LLC; CONSUMERS OF AMERICA

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 ROBERT MAKATURA; RAYMOND MAKATURA; LUCILLE MAKATURA; RITA ROHLEDER; ROCKY MOUNTAIN READERS SERVICE, INC; MAGAZINE/ONE, LLC.; PROMO READERS SERVICE, 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; CONSUMER NETWORK OF AMERICA, LLC; and CONSUMERS OF AMERICA (hereinafter, “MAKATURA DEFENDANTS”) and any person under the direction or control of any MAKATURA 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 MAKATURA 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 MAKATURA 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 MAKATURA DEFENDANTS expressly deny the allegations in the STATE’s Complaint and the parties agree that the MAKATURA 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 MAKATURA DEFENDANTS not covered by this lawsuit and Final Consent Judgment or any acts or practices of the MAKATURA DEFENDANTS conducted after the entry of this Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves the MAKATURA DEFENDANTS of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for the MAKATURA 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 MAKATURA DEFENDANTS' past or future business practices. The MAKATURA 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 MAKATURA DEFENDANTS with respect to the acts and practices covered by this Final Consent Judgment.

1.8 Use of Settlement as Defense. The MAKATURA 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 MAKATURA 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 MAKATURA DEFENDANTS. However, nothing in this paragraph shall prohibit the MAKATURA DEFENDANTS from otherwise commenting on or quoting this Consent Judgment, changes to their business practices or the resolution of this case. Upon notice and proof provided for in Part VI 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 Part 6 and Section 4.3 below shall give rise to all contempt remedies available to the Court, including those provided under C.R.S § 6-1-112(1)(b).

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 MAKATURA 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 MAKATURA DEFENDANT who filed for bankruptcy, in the amount of 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 MAKATURA 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.

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 March 31, 2013, this Court PERMANENTLY ENJOINS the MAKATURA 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 March 31, 2013, this Court PERMANENTLY ENJOINS DEFENDANTS RAYMOND MAKATURA, ROBERT MAKATURA, LUCILLE MAKATURA, AND RITA ROHLEDER 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 magazine consumers in Colorado or otherwise engages in Magazine Solicitations in Colorado;
- b. purchases magazine orders that were originated in Colorado;
- c. maintains any Magazine Solicitation office in Colorado, including call centers; or
- d. has Magazine Solicitation operations that are controlled or directed, in whole or in part, by any person located in Colorado.

Nothing in this provision shall be read to prevent the MAKATURA DEFENDANTS from purchasing/clearing magazines or other supplies from Colorado-based companies and, when necessary, obtaining refunds or incentives therefrom.

3.3 Effective immediately, in connection with any Magazine Solicitations by the MAKATURA DEFENDANTS that otherwise comply with this Order, the Court PERMANENTLY ENJOINS the MAKATURA 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 With regard to any sales of magazine packages that otherwise comply with this Order, in the event that a customer cancels or indicates a desire to cancel his or her order by contacting the MAKATURA DEFENDANTS or by closing a credit card or bank account to put an end to disputed charges, the MAKATURA DEFENDANTS may not collect any amount in excess of what the MAKATURA DEFENDANTS have previously paid for magazines ordered on behalf of such customer plus 20% of this amount. The MAKATURA DEFENDANTS shall confirm every order in 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.

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

3.6 Notwithstanding the MAKATURA DEFENDANTS' consent to jurisdiction under Section 6.4 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 MAKATURA 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 MAKATURA DEFENDANTS, jointly and severally, to pay a total amount of \$475,000 in fines, penalties, restitution, damages and costs and fees. The MAKATURA DEFENDANTS shall make ten payments of \$47,500, to be paid on the following dates: January 1, 2013; August 1, 2013; March 1, 2014; September 1, 2014; April 1, 2015; October 1, 2015; May 1, 2016; November 1, 2016; May 1, 2017; and December 1, 2017.

4.2 All civil penalties, restitution, and costs and fees shall be paid by the MAKATURA DEFENDANTS to the Colorado Department of Law to be held along with any interest thereon in trust by the Attorney General to be used first for reimbursement of the State's actual costs and attorney fees and, second, to be held along with any interest thereon, in trust by

the Attorney General for future consumer education, consumer fraud, or antitrust enforcement actions. C.R.S. § 6-1-110.

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

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

4.3 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 MAKATURA DEFENDANTS fail to make any payment under Section 4.1, the STATE shall provide the MAKATURA DEFENDANTS written notice of default and provide the MAKATURA DEFENDANTS with 30 days to cure the default without penalty. If the MAKATURA DEFENDANTS fail to cure the default within 30 days, a 10% late fee will be added to that payment, and the MAKATURA DEFENDANTS will be given an additional 30 days to pay. If the MAKATURA DEFENDANTS do not cure the default within this additional 30-day period, the STATE may petition the Court alleging a violation of this Final Consent Judgment. In any such action, and notwithstanding the provisions of Part 6, below, the MAKATURA DEFENDANTS consent to a joint and several judgment in the amount of two times the balance due at the time of the default.

4.4 If DEFENDANTS timely make payment of the first two (2) payments under Section 4.1, Defendant RITA ROHLEDER shall not continue to be jointly and severally liable for the remaining payments under Section 4.1.

4.5 If DEFENDANTS timely make payment of the first five (5) payments under Section 4.1, Defendant LUCILLE MAKATURA shall not continue to be jointly and severally liable for the remaining payments 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 MAKATURA 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 MAKATURA 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 MAKATURA 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 MAKATURA DEFENDANTS agree to cooperate with all investigations and other proceedings that the STATE has brought or may bring in connection with the present litigation and this Final Consent Judgment, including the 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 MAKATURA 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 INJUNCTIVE TERMS OF CONSENT JUDGMENT

6.1 If the STATE receives evidence of more than five violations of Part III of this Final Consent Judgment, the STATE may file a petition with this Court alleging violations of this Final Consent Judgment.

6.2 Following notice and hearing on the STATE's petition and a finding by the Court that the violation was a knowing or 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 any MAKATURA DEFENDANT has 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 against such MAKATURA DEFENDANT. If the Court finds that any MAKATURA DEFENDANT has willfully or knowingly violated any term of this Final Consent Judgment, such MAKATURA DEFENDANT consents to a judgment in the amount of \$1,000,000. The parties agree that the term “knowing” means that the MAKATURA DEFENDANT knew or should have known of the violation of this Final Consent Judgment.

6.4 In any action brought by the STATE under this Part VI, except for an action alleging a violation of Section 3.3 or Section 3.4, the MAKATURA DEFENDANTS consent to personal and subject matter jurisdiction in the District Court for the City and County of Denver. Nothing in this paragraph shall be deemed a waiver of the MAKATURA DEFENDANTS’ right to challenge the jurisdiction of the Court for violations occurring outside of Colorado.

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

BY THE COURT:

District Court Judge

This Consent Judgment Concerning the MAKATURA DEFENDANTS, signed and agreed to this 19th day of November, 2012.

Jeff Smith

Jeff Smith, Reg No. 31038
Smith Byers, LLC, as to form, for Defendants
Robert Makatura, Raymond Makatura, Lucy
Makatura, Rita Rohleder, Rocky Mountain
Readers Service, Inc; Magazine/One, LLC.;
Promo Readers Service, 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; Consumer Network of America,
LLC; Consumers of America

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
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Attorneys for Plaintiff

*Counsel of Record

Robert Makatura

ROBERT MAKATURA, individually and on
behalf of Rocky Mountain Readers Service,
Inc; Magazine/One, LLC.; Promo Readers
Service, Inc; Family Publications, Inc; Increase
Publications, LLC; I.N.C. & Associates; N R
and Assoc. Inc.; Neighborhood Readers and
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Limited Liability Company; Consumer
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America

Rita Rohleder

RITA ROHLEDER

Lucy Makatura

LUCY MAKATURA, individually and on
behalf of Promo Readers Service, Inc.

Raymond Makatura

RAYMOND MAKATURA, individually and
on behalf of Rocky Mountain Readers Service,
Inc; Magazine/One, LLC.; Promo Readers
Service, 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; Consumer
Network of America, LLC; Consumers of
America

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: 47877012

Current Date: Nov 26, 2012

Case Number: 2011CV6866

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

Court Authorizer: McGahey, Robert Lewis

/s/ Judge McGahey, Robert Lewis