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Court: CO Adams County District Court 17th JD

Judge: Edward C Moss

File & Serve

Transaction ID: 38848284

Current Date: Jul 27, 2011

Case Number: 2010CV1131

Case Name: COLO ATTY GEN vs. REAL TALK NETWORK INC et al

**EFILED Document – District Court
CO Adams County District Court 17th JD
2010CV1131
Filing Date: Jul 27 2011 4:34PM MDT
Transaction ID: 38947010**

/s/ **Judge Edward C Moss**



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.

Edward C. Moss
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

DISTRICT COURT, ADAMS COUNTY,
COLORADO

1100 Judicial Center Drive
Brighton, Colorado 80601

STATE OF COLORADO, ex rel. JOHN W. SUTHERS,
ATTORNEY GENERAL, and LAURA E. UDIS,
ADMINISTRATOR, UNIFORM CONSUMER
CREDIT CODE

Plaintiffs,

v.

REAL TALK NETWORK, INC. d/b/a REAL TALK
NETWORK and GET REAL WITH DAVE, a Colorado
corporation, REAL TALK, LLC, a Colorado limited
liability company, REAL TALK RADIO SHOW
NETWORK, LLC, a Colorado limited liability company,
INSTITUTE OF CONSUMER ECONOMIC
EDUCATION, LLC, a Colorado limited liability
company, FREEDOM FINANCIAL PARTNERS, LLC, a
Colorado limited liability company,
DAVID ALLEN BURKE, individually, ERIK SALE,
individually, and MELODIE ROSE BURKE,
individually.

Defendants.

▲ **COURT USE ONLY** ▲

Case No.: 2010CV1131

Div.: A

CONSENT DECREE

Plaintiffs, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, and Laura E. Udis, Administrator of the Uniform Consumer Credit Code (collectively referred to herein as “State”), by and through undersigned counsel, and Defendants REAL TALK NETWORK, INC. d/b/a REAL TALK NETWORK and GET REAL WITH DAVE, REAL TALK LLC, REAL TALK RADIO SHOW NETWORK LLC, INSTITUTE OF CONSUMER ECONOMIC EDUCATION LLC, FREEDOM FINANCIAL PARTNERS LLC, DAVID ALLEN BURKE and MELODIE ROSE BURKE (“Defendants”), having each consented to the entry of this Consent Decree without trial or other adjudication of fact or law herein, and the Court, having considered this matter and being fully advised in the premises, FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and the parties hereto, and the Amended Complaint states claims upon which relief can be granted under the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101 *et seq.* (2010) (“CCPA”), the Uniform Consumer Credit Code, Colo. Rev. Stat. § 5-1-101 *et seq.* (2010) (“UCCC”), the Colorado Credit Services Organization Act, Colo. Rev. Stat. § 12-14.5-101 *et seq.* (2010) (“CCSOA”), and the Federal Credit Repair Organizations Act, 15 U.S.C.A. § 1679 *et seq.* (2010) (“CROA”). Venue is proper in Adams County, Colorado.

2. This Court is authorized to issue a permanent injunction and other relief pursuant to Colo. Rev. Stat. §§ 6-1-110(1), 6-1-112(1), and 6-1-113(4) (2010) of the CCPA as well as the other statutes cited above.

PERMANENT INJUNCTION

3. Defendants are permanently enjoined from soliciting, collecting, or accepting payment for services of any kind in connection with REAL TALK NETWORK, INC., d/b/a REAL TALK NETWORK and GET REAL WITH DAVE, REAL TALK, LLC, REAL TALK RADIO SHOW NETWORK, LLC, and INSTITUTE OF CONSUMER ECONOMIC EDUCATION, LLC (collectively, “RTN”).

4. Defendants are permanently enjoined from referring any consumer who has signed a contract for the RTN program to a collections agency or from selling or assigning any contracts to any other person. Within thirty (30) days of the Court signing this Consent Decree, Defendants shall file the requisite paperwork requesting that each credit reporting agency delete any information previously filed with any consumer reporting agencies through a collection agency relating to the RTN contracts and/or the consumers that entered into them. Should any consumer who has signed a contract for the RTN program contact the Attorney General’s office claiming that their credit report from any of the credit reporting agencies contain negative credit information relating to the RTN contracts, Defendants agree that they will send or re-send the requisite paperwork requesting that each credit reporting agency delete any information previously filed with any consumer reporting agencies.

5. Defendants are permanently enjoined from providing, performing, selling, marketing, or advertising: (i) debt consolidation, (ii) debt elimination, (iii) credit repair, (iv) debt settlement; and (v) related counseling, in efforts to obtain money directly from consumers. For the purposes of this Consent Decree, the term “consumer” shall mean any individual natural person and not any business entity including but not limited to corporations or limited liability companies. This injunction does not prohibit David Allen Burke and Melodie Rose Burke (collectively, the “Burke Defendants”) from being employed in the financial services industry, which includes without limitation

banks, credit unions, insurance companies, stock brokerages, money managers, investment firms, management consulting, or government sponsored enterprises, provided that the Burke Defendants do not have an ownership interest in or exercise any managerial control at the entity with whom they are employed. For purposes of this Consent Decree, “managerial control” includes any employment where the employee’s duties regularly consist of any combination of the following factors: financial control of the enterprise, management of the enterprise, regularly directing the work of two or more employees of the enterprise, having the authority to fire and hire employees or make recommendations of that particular weight regarding firing, hiring or advancement of employees, and regularly exercising discretionary powers.

6. Defendants are permanently enjoined from publishing, broadcasting, distributing or disseminating any information, including written, oral, or video, relating to debt elimination, debt management, debt settlement, debt counseling, wealth-building or credit repair services or products offered or provided to consumers in efforts to obtain money directly from consumers.

MONETARY RELIEF

7. Defendants agree to pay to the Colorado Department of Law \$226,414.57. Payments shall be made as follows:

- a. Upon the Court signing this Consent Decree, the State shall cause the accompanying Order to Transfer Funds to be served upon all banks where Defendants maintained accounts that were frozen by this Court’s July 9, 2010 Amended Temporary Restraining Order and July 30, 2010 Preliminary Injunction Order;
- b. Defendants agree to repay the State of Colorado \$27,873 representing the unemployment benefits that they received in 2010 and 2011 that the State alleges were collected in violation of the Court’s July 30, 2010 Preliminary Injunction Order. Defendants further agree to pay the State of Colorado an additional \$25,000. The total sum of \$52,873 (“Settlement Sum”) shall be paid to the State of Colorado Department of Law as follows:
 - i. On or before September 1, 2011, but in no case more than forty-five (45) days after the filing of this Consent Decree, Defendants shall pay the Colorado Department of Law \$500. Thereafter, Defendants shall pay \$500 on or before the first day of each month until March 1, 2013. On March 1, 2013, Defendants will pay the Colorado Department of Law \$1,000 and shall continue to pay the Colorado Department of Law \$1,000 on or before the first day of each month until October 1, 2016 or until the full balance of the agreed \$52,873 is paid to the Colorado Department of Law. Other

than as described in paragraphs 12, 13, 14 and 19 below, in no case shall the Defendants be obligated to pay in excess of the Settlement Sum.

c. As security for the foregoing obligation, Defendants agree that State of Colorado shall file a lien against their residence located at 14890 Hanover Street, Brighton CO 80602 in the amount of \$52,873, declining as payments are made.

8. Payments should be made to State of Colorado Department of Law and include a reference of "Real Talk Network/David and Melodie Burke, Case No. 10CV1131." Deliver payments to: Colorado Attorney General, ATTN: Consumer Fraud Unit, 1525 Sherman Street, 7th Floor, Denver, CO 80203.

9. The State shall use the first \$200,000 collected on this judgment for consumer restitution. The final \$26,414.57 shall be paid 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. (2010).

10. Due to the public interest nature of the State's claims in this matter, Defendants hereby agree and stipulate that the monetary obligation imposed hereunder shall be considered a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss.

11. There shall be no penalty if Defendants prepay any of the amounts owed under this Consent Decree.

12. If Defendants make a partial payment under this Consent Decree, the State's acceptance of a partial payment does not prevent it from declaring the Consent Decree breached, collecting the full amount due and seeking other remedies, including contempt and triggering the suspended final judgment described in Paragraph 14 of this Consent Decree. In such event, the State shall be entitled to recover all its costs and attorney fees in collecting such amounts and pursuing relief under this Consent Decree. Partial payments may be distributed at the discretion of the Attorney General and without the need for all future payments to be made.

13. 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 Consent Decree to the bankruptcy estate, then a judgment shall enter against Defendants, jointly and severally, for nine hundred thousand dollars (\$900,000) in favor of the State.

DEFAULT PROVISION AND ENTRY OF FINAL JUDGMENT

14. If Defendants default on any monthly payment and such default is not cured within sixty (60) days, a stipulated final judgment shall enter by the Court for \$900,000 against Defendants, jointly and severally, and in favor of the State. In the event of a final judgment entering, the State shall be entitled to recover its costs and attorney fees in collecting such amounts. The amounts collected pursuant to this judgment may be distributed at the discretion of the Attorney General and before the entire judgment is collected. The judgment shall be considered a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss.

15. In the event of default under this Consent Decree, left uncured as provided for in Paragraph 14 herein, the State need provide only notice, as provided herein, to Defendants and to the Court regarding the default, and the final judgment shall enter without any further proceedings, hearings, or argument. Defendants consent and stipulate to such final judgment entering and waive any process, objection, opportunity to be heard, or appeal.

VIOLATIONS OF THE CONSENT DECREE

16. Proof by a preponderance of the evidence of a violation of this Consent Decree shall constitute prima facie evidence of a deceptive trade practice for the purposes of any civil action or proceeding brought thereafter by the Attorney General or any motion made in these proceedings pursuant to Colo. Rev. Stat. § 6-1-110(2) (2010).

17. The parties understand and agree that a violation of any provision of this Consent Decree may, in addition to resulting in the payment detailed in Paragraph 14 above, give rise to contempt remedies as well as penalties provided under Colo. Rev. Stat. § 6-1-112(b) (2010).

18. The State's agreement to accept the monetary relief set forth herein is based, in part, upon the current financial condition of the Burke Defendants as sworn to in their Financial Affidavit provided to the State in conjunction with this Consent Decree, as well as statements made under oath by the Burke Defendants in a deposition pursuant to C.R.C.P 69 in *One Park Centre RLLP v. Reality Financial LLC, Real Talk Network, Inc., David Burke and Melodie Burke*, Case No. 2010 CV 1273, Adams County District Court ("Rule 69 Deposition"), a transcript of which Defendants provided to the State. The Burke Defendants agree that any knowing material misrepresentations on the Financial Affidavit or in their Rule 69 Deposition testimony will be deemed a violation of this Consent Decree and subject to the remedies herein.

19. If the State discovers that Defendants made a material misrepresentation regarding their income or assets on their Financial Affidavit or in their Rule 69 Deposition, then the State may provide written notice to the Court and Defendants describing the material misrepresentation. Upon receiving such notice, the Defendants

have thirty (30) days to respond to the State's allegations. If the Court finds a material misrepresentation in the income and/or assets as described on the Financial Affidavit or in the Rule 69 Deposition, the Court shall enter an order that accelerates all payments due hereunder and makes the entire amount immediately due and payable. Defendants further agree that the State may petition the Court for an increase in the monetary relief under this Consent Decree in the event that the Defendants are found to have materially misrepresented their income or assets.

20. The obligations set forth in this Consent Decree are continuing.

CONSIDERATION

21. Defendants are entering into this Consent Decree for the purpose of compromising and resolving disputed claims and to avoid the expense of litigation. Defendants' execution of this Consent Decree shall not be considered an admission by Defendants, and nothing herein shall be construed as an admission of liability by Defendants. Nothing herein constitutes approval by the State of Defendants' past or future practices, and Defendants shall not make any representation to the contrary.

22. This Consent Decree is intended to resolve finally and fully all of the civil disputes between Plaintiffs and Defendants arising out of the conduct alleged in the Amended Complaint. This Consent Decree shall not be construed to affect any claims by Plaintiffs against any other Defendants, named or unnamed, or against any other individuals or entities regarding the conduct alleged in the Amended Complaint. This Consent Decree shall not be construed to affect any criminal actions or charges against Defendants, named or unnamed, or against any other individuals or entities regarding the conduct alleged in the Amended Complaint.

RETENTION OF JURISDICTION

23. This Court shall retain jurisdiction over this matter for the purposes of (a) enabling the State to apply, at any time, for enforcement of any provision of this Consent Decree and for sanctions or other remedies for any violation of this Consent Decree, including contempt; and (b) enabling any party to this Consent Decree to apply, upon giving thirty (30) days written notice to all other Parties, for such further orders and directions as might be necessary or appropriate either for the construction or enforcement of this Consent Decree or for the modification or termination of one or more injunctive provisions.

OTHER TERMS AND CONDITIONS

24. ***Cooperation.*** Defendants agree to cooperate with all investigations and other proceedings that the State may bring to enforce the terms of this Consent Decree, including within this cooperation agreement are the obligations to:

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

25. ***Private Parties Retain Rights.*** This Consent Decree shall not be construed to affect the rights of any private party to pursue remedies pursuant to C.R.S. § 6-1-113, or under any other statute or common law.

26. ***No Release by Any Other Government Authority.*** Nothing in this Consent Decree shall be construed to release claims by any other government authority. However, the repayment of \$27,873 received by Defendants in unemployment benefits pursuant to this Agreement as well as the Stipulated Order Regarding Defendants David Allen Burke And Melodie Rose Burke Collection Of Unemployment Benefits entered by the Court on July 5, 2011 are based on the State's allegation that said payments violated the Preliminary Injunction Order entered by the Court on July 30, 2010, which allegations Defendants dispute, and not because the State alleged that receipt of said unemployment benefits violated any other agreement, order or provision of law. The agreement to repay and the actual repayment of the unemployment benefits by Defendants is a compromise only and may not be used as any evidence that receipt of said benefits was a violation of any agreement, order, or law.

27. ***Service of Notices and Process.*** Service of notices or process required or permitted by this Consent Decree shall be in writing and delivered on the following persons:

To Defendants:

David Savidge, Esq.
Savidge Law Firm, P.C.
4845 Pearl East Circle, Suite 101
Boulder, CO 80301

To the State of Colorado:

Alissa Hecht Gardenswartz
Assistant Attorney General
Consumer Protection Section
Colorado Attorney General's Office
1525 Sherman Street
Denver, Colorado 80203

If Defendants change their address or telephone number, they must notify the State in writing of the new address, telephone number or email address within thirty (30) days.

28. **Waiver.** The failure of any party to exercise any rights under this Consent Decree shall not be deemed a waiver of any right or any future rights.

29. **Severability.** If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder hereof, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

30. **Conflict with Subsequent Law.** In the event that any applicable law conflicts with any provision hereof, making it impossible for Defendants to comply both with the law and with the provisions of this Consent Decree, the provisions of the law shall govern.

31. **Counterparts.** This Consent Decree may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Consent Decree. Facsimile and electronic copies of this Consent Decree and the signatures hereto may be used with the same force and effect as an original.

32. **Inurement.** This Consent Decree is binding and inures to the benefit of the parties hereto and their respective successors and assigns.

33. **Amendment.** This Consent Decree may be amended solely by written agreement signed by the State and by the Defendants.

34. **No Other Representations.** There are no other representations, agreements or understandings between Defendants and the State that are not stated in writing herein.

ACKNOWLEDGMENT

35. Defendants acknowledge that they have thoroughly reviewed this Consent Decree, that they have had an opportunity to consult with an attorney if they choose, that they understand and agree to its terms, and that they agree that it shall be entered as the Order of this Court.

s/ Alissa Hecht Gardenwartz

David Savidge

Alissa Hecht Gardenswartz, 36126*
Assistant Attorney General
Consumer Fraud Unit
Consumer Protection Section
PHONE: (303) 866-5079

David Savidge, 36568
Savidge Law Firm, P.C.
PHONE: (303) 625-4086
FAX: (303) 625-4087

FAX: (303) 866-4916
Attorneys for Plaintiffs

Attorneys for Defendants

*Counsel of Record

Date: _____

Date: _____

David Allen Burke, individually and
on behalf of Defendants REAL
TALK NETWORK, INC. d/b/a
REAL TALK NETWORK and GET
REAL WITH DAVE, REAL TALK
LLC, REAL TALK RADIO SHOW
NETWORK LLC, and FREEDOM
FINANCIAL PARTNERS LLC

Date: _____

Melodie Rose Burke, individually
and on behalf of Defendant
INSTITUTE OF CONSUMER
ECONOMIC EDUCATION, LLC

Date: _____

SO ORDERED THIS _____ DAY OF _____, 2011.

Edward C. Moss
District Court Judge

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.