

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: February 25, 2013
<p>STATE OF COLORADO, <i>ex rel.</i> JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiffs,</p> <p>v.</p> <p>RAYMOND MAKATURA; et al.</p> <p>Defendants.</p>	<p>Case No.: 11CV6866</p> <p>Div.: 409</p>
<p>ORDER</p>	

This matter was tried to the Court on January 28-30, 2013.

Having considered the parties' pleadings and all other documents filed of record in this action, having considered all the admissible evidence and arguments of counsel, and being otherwise fully advised, I now enter this Court's Findings of Fact, Conclusions of Law, and Judgment:

PROCEDURAL BACKGROUND

1. On October 4, 2011, the State filed a civil law enforcement action pursuant to the Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2011) ("CCPA"), against Defendants Michael Brian Patterson ("Patterson"), his company, World Wide Readers Service, Inc. ("WWRS") (collectively, "Patterson Defendants"), and several other individuals related to Patterson by blood or marriage.
2. On October 5, 2011 the Court (the Honorable Judge Norman D. Haglund), granted the State's *ex parte* application for a temporary restraining order ("TRO") against all Defendants, which required all Defendants to cease solicitation of magazines and collection on current accounts. On October 14, the Court entered a stipulated, modified temporary restraining order as to the Patterson Defendants.
3. A three-day preliminary injunction hearing was held, in which the Patterson Defendants did not participate. After the hearing, the Court issued an order that dissolved the TRO and permitted the participating Defendants to resume solicitations and collections subject

to a preliminary injunction against specific conduct that the Court found had constituted or facilitated deceptive trade practices. *See Order* dated Oct. 21, 2011. In coming to this determination, the Court found that there was a reasonable probability that the State would succeed in its claims against the participating Defendants, including Defendant Henry Aragon and his companies. *See id.* at pp. 3, 5.

4. Following the October 21, 2011 ruling, the Court issued a stipulated preliminary injunction order as to the Patterson Defendants. *Stipulated Preliminary Injunction Order as to Defendants World Wide Readers Service, Inc. and Michael Brian Patterson*, Nov. 4, 2011 (“P.I. Order”). The P.I. Order, which is currently in effect, essentially tracks the Court’s October 21 order, and includes an injunction against:
 - a. “[r]epresenting 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,” P.I. Order at ¶ 5(a);
 - b. “[r]epresenting 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,” *id.* at ¶ 5(b);
 - c. “[r]epresenting 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,” *id.* at ¶ 5(c); and
 - d. “[r]epresenting to the solicited person that the solicitor is putting a ‘privacy block’ on the solicited person’s credit, debit or bank 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,” *id.* at ¶ 5(d).
 - e. [r]epresenting 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,” *id.* at ¶ 5(e).

The P.I. Order further requires the Patterson Defendants to make their “best efforts to ensure that no person or entity from whom they purchase magazine-subscription orders engages in any of the activities” set forth above. *Id.* at ¶ 7.

5. On February 27, 2012, the State filed its First Amended Complaint.

FINDINGS RELEVANT TO THE DECEPTIVE TRADE PRACTICES

I. BACKGROUND

6. The Attorney General began its investigation into the Patterson Defendants and other persons related to Defendant Patterson by blood and marriage in the fall of 2010. *See* Testimony of Investigator Rebecca Wild. The investigation was opened in response to hundreds of consumer complaints that the Attorney General received, either directly or through the Better Business Bureau, in connection with the business practices of the Patterson Defendants and the related persons and companies. *See id.*
7. [Stipulated.] Defendant Patterson has been the sole owner of Defendant WWRS since WWRS's formation in in 2003 through the present.
8. Defendant Patterson developed WWRS's policies and procedures relating to WWRS's purchase of magazine orders, including who WWRS would purchase magazine orders from. Defendant Patterson also developed WWRS's policies and procedures relating to customer service, cancellation, collections, and sales of "renewals" to customers already in WWRS's database. *See* Testimony of Defendant Patterson.
9. [Stipulated.] From August 17, 2009 through June 13, 2011, WWRS purchased the right to collect on magazine orders originated by companies owned by former Defendant Henry Aragon (hereinafter "Henry Aragon" or "Aragon").
10. The companies owned by Henry Aragon that sold orders to WWRS during this time period were Readers Source, LLC (hereinafter "Readers Source") and Magazine Connection, LLC (hereinafter "Magazine Connection"). *See* Testimony of Henry Aragon. During this time period, Henry Aragon's telemarketing offices were in Denver, Colorado and the Patterson Defendants' operations were also based in Colorado. *See* Pl. Ex. 24; Pl. Ex. 17, at MAG:COMPLAINTS:003091.
11. WWRS purchased the orders within days of their origination and paid, on average, slightly more than \$300 for each order. *See* Testimony of Defendant Patterson.
12. The typical order that WWRS purchased from Readers Source or Magazine Connection required the consumer to make twenty-four payments of \$49.98, for a total of \$1,198.90. *See* Testimony of Defendant Patterson; Pl. Ex. 17, at MAG:COMPLAINTS:003091. For this price, the consumer was to receive a five-year magazine service, which would be paid for in the first twenty-four months.¹
13. Patterson and Aragon are cousins. *See* Testimony of Henry Aragon.

¹ The number of magazines sometimes varied, as did the payment plan (*i.e.*, some contracts called for twenty-four monthly payments of \$39.98 for a total of \$959.52). *See, e.g.*, Def. Ex. 373.

14. The Patterson Defendants made a deliberate effort not to purchase magazine orders of consumers who live in the State of Colorado. However, some Colorado consumers have fallen through the cracks of this policy. *See* Testimony of Defendant Patterson.

II. ORDERS PURCHASED FROM HENRY ARAGON'S COMPANIES

A. Henry Aragon's Telemarketers Engaged in Deceptive Trade Practices

15. Henry Aragon testified that he has been in the business of selling magazine packages for many years. Aragon has used the same three-step process to sell magazine packages for his entire career and has used the same basic sales scripts for each of the three steps, although there have been slight modifications to the scripts. *See* Testimony of Henry Aragon. A man named Dale Leonard initially taught Aragon the three-step process and provided him with the scripts. *See id.*

16. Henry Aragon required his telemarketers to follow his scripts word for word on every call they placed. *See* Testimony of Henry Aragon.

17. In the first step in Henry Aragon's sales process, a telemarketer reads the "sales script" to the consumer. *See* Pl. Ex. 1; Testimony of Henry Aragon.

18. The sales script contains the following false statements:

- "I'm with the credit department with the publishers that send out your magazines. I'm not calling to collect any money"
- "We were just going through your files and noticed that some of your magazines had set to terminate prematurely on you."
- "They thought I should call just in case another company calls and tries to get you to order more."
- "With what you have coming plus your 60 months; you're set with us for quite some time at \$2.99 a week."

See Pl. Ex. 1; Testimony of Henry Aragon.

19. The sales pitch also tells the consumer, twice, not to order more magazines. *See* Pl. Ex. 1.

20. After the first step, the consumer is transferred to another telemarketer, the "capper," who reads the "capping pitch." *See* Pl. Ex. 25; Testimony of Henry Aragon.

21. The capping pitch contains the following false and deceptive statements:

- “All I’m doing is checking up on (rep. name), was (he/she) polite and courteous when (he/she) spoke with you?”
- “(He/she) did let you know that you are one of our preferred customers and receiving you’r [*sic*] magazines at \$3.99 a week, is that correct?”
- “I’m calling because we are going to get you out our new listing, we did update that.”
- “Now we are helping you with the billing. We’re taking your payments down to \$16.66 a month.”
- “Now you are going through your credit card, is that a regular card or a debit card?”
- “From now on you’r [*sic*] monthly amount will show up separately for you.”
- “But I’m also going to put a privacy block on there for you, because as (rep. name) stated, we’ve been getting a lot of phone calls from our customers stating that they’re getting calls from other companies trying to get them to buy more.”
- “If you can grab your card, I’ll need the expiration date *again* and this will be the last time you’ll have to do that” (emphasis added).²
- “You see on the back [of the credit or debit card] where you sign your name. Theres [*sic*] 3 more numbers back there, I need those. That # is called your CVV, that’s what I’m going to use to put a privacy block on there for you.”
- “The publishers wanted to make sure you are receiving [*sic*] you’re supposed to.”³

² The pitch indicates that the telemarketer needs the credit card expiration date “again.” However, at this point in the three-step process, the consumer has not yet provided his/her expiration date to the telemarketer. See Plaintiff’s Exhibits 1 and 25; Testimony of Henry Aragon.

³ This statement immediately precedes the script’s ruse for determining what magazines the caller is already receiving. The following sentence in the script is, “Off the top of your head which titles have you seen come through the door so far?”

- “. . . [T]he way the publishers are handling the billing now is 3, 6, and 12 months at a time.”
- “I’m going to leave your billing at the 3 months which will save you more money. . . . So I just saved you a couple hundred dollars.”

See Pl. Ex. 25; Testimony of Henry Aragon.

22. In his testimony, Henry Aragon admitted that his scripts were false in multiple respects, including in their representations that the telemarketer is “with the credit department with the publishers that send out your magazines,” that the consumer is a “preferred customer” who is already making payments to the company, that the company is calling to bring the consumer’s prices down, and that the company will place a privacy block on the consumer’s account. *See* Testimony of Henry Aragon.

23. The third step is the recorded “verification,” which Henry Aragon and Defendant Patterson claim “verifies” the consumer’s agreement to purchase a brand new magazine package. *See* Testimony of Henry Aragon; Testimony of Defendant Patterson.

24. Following the “verification,” a letter is mailed to the consumer. The capping script contains a number of statements that mislead the consumers about the meaning and purpose of the letter. As noted above, the second paragraph of the script begins, “I’m calling because we are going to get you out our new listing, we did update that.” Pl. Ex. 25, at M011447. Toward the end of the pitch, after explaining how the new, lowered pricing plan will “save[] the consumer a couple hundred dollars,” the pitch continues, “Now I’m going to get you out a written confirmation for your records. . . . It’s going to show the magazines and the new listing so you can change them at any time.” *Id.* at M011449.

25. In telling the consumer that “from now on, you’r [*sic*] monthly amount will show up separately for you,” the capping pitch anticipates the fact that the consumer’s future credit card statements will show two monthly charges for magazines: one from the consumer’s original magazine company, and one from WWRS. *See* Pl. Ex. 25.

B. Henry Aragon’s Deceptive Sales Tactics Deceived Consumers

26. Testimony from consumers established that Henry Aragon’s deceptive practices were successful in deceiving consumers into providing their credit card information and participating in the recorded “verification.”

27. WWRS purchased the order of consumer Patricia Hove from one of Henry Aragon's companies. *See* Testimony of Defendant Patterson; Def. Ex. 353, at line 1432.
28. In her testimony, Ms. Hove explained that she received a telephone call on December 30, 2009. At the time of the call, Hove was already receiving and making payments for magazines. The caller told Hove that she was contractually obligated to make twenty-four months of payments for her magazines, but that they could give her a deal and bring her payments down to \$49.98 per month. Hove did not believe she owed this additional amount and did not want to purchase more magazines, but the caller convinced her that she had no choice. Hove testified that the caller put her on a recording to confirm the deal. *See* Testimony of Patricia Hove.
29. WWRS purchased the order of consumer Michael Wolf from one of Henry Aragon's companies. *See* Testimony of Defendant Patterson; Def. Ex. 353, at line 1702.
30. In his testimony, Mr. Wolf explained that sometime in the fall of 2010, a boy came to his door and offered to sell him a magazine. The boy said that Wolf could have the magazine sent to the troops overseas. Wolf, a veteran, purchased a two-year subscription to Maxim magazine to be sent to the troops. However, the Maxim magazines soon began arriving at Wolf's home in Maryland. Later that fall, Wolf received a phone call from a telemarketer who claimed to be with the company who had sold him the Maxim subscription. Wolf repeatedly requested the caller to get the Maxim subscription sent overseas and was never told that he was not speaking with the company that had sold him the Maxim subscription. Instead, Wolf was transferred to multiple people and ended up extremely confused. Wolf did not intend to order more magazines, much less enter into a \$1,200 "contract" for magazines. Wolf recalls agreeing to be put on a recording, a decision he regretted almost soon as he hung up the phone. *See* Testimony of Mike Wolf.

C. Defendant Patterson Knew that the Orders WWRS Purchased from Henry Aragon Were Procured through Deceptive Trade Practices

i. Defendant Patterson Was Familiar with Henry Aragon's Scripts and Understood How they Deceived Consumers.

31. Defendant Patterson was familiar with Henry Aragon's scripts and understood how they deceived consumers.

32. In sworn Civil Investigative Demand testimony that Defendant Patterson gave to the Attorney General on July 6, 2011, Patterson admitted that he had reviewed Magazine Connection's scripts. Specifically, the following testimony of Mr. Patterson was read into the record at trial:

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5 Q Does World Wide Readers keep or obtain
6 copies of capping scripts from its dealers?

7 A No, generally not.

8 Q Does World Wide Readers review the
9 sales and capping scripts of its dealers before
10 purchasing orders from them?

11 A Generally, somebody who comes in is
12 coming in from a referral or something like that.
13 If they've been selling the same package for years
14 and years, I don't question their method. If it's
15 somebody I don't know, yes, I will look at their
16 script.

17 Q Have you reviewed Magazine
18 Connection's scripts?

19 A Yes, I have.

20 Q When did you do that?

21 A Years ago. And I'll tell you why. It
22 was mainly because I was interested in how they were
23 doing it because they were quite good at what they
24 do. I looked at it, and it only works with their
25 lead sources, to be perfectly honest. We've seen it

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1 and tried it in other aspects and it doesn't work.

2 Q What have you tried?

3 A Tried using their script. Because
4 they're doing so well at it, you know, I'm, like,
5 I'll try this script. And it didn't work.

33. This testimony is significant not only because it establishes Defendant Patterson's knowledge of Henry Aragon's scripts. The testimony also reveals that Patterson, after reviewing the scripts to learn the secret to Aragon's success, came to an understanding of how Aragon's method "works with [Magazine Connection's] lead sources." As Patterson testified at trial, Aragon's "leads" were consumers who were currently making payments on a magazine order or who had done so in the past.

34. Defendant Patterson occasionally purchased lead lists from Henry Aragon. *See* Testimony of Defendant Patterson. One such lead list that Patterson purchased from Aragon in June 2010 contained detailed consumer information that would assist a

telemarketer in pretending to have a pre-existing relationship with the consumer. This information included the consumer's complete credit card number and expiration date and a list of magazines that the consumer received. *See* Testimony of Defendant Patterson; Pl. Ex. 24.

35. Defendant Patterson worked for Henry Aragon in the early 2000's, when Aragon's company was called Metro Publications. *See* Testimony of Henry Aragon; Testimony of Defendant Patterson. Metro Publications sold the same magazine package that Magazine Connection and Readers Source sold. *See* Testimony of Henry Aragon. Aragon testified that Metro Publications also sold renewals to single magazines, but that the majority of Metro Publications' business was package sales.
36. Metro Publications utilized the same three-step sales process and the same scripts for its package sales that Readers Source and Magazine Connection used. *See* Testimony of Henry Aragon.
37. Defendant Patterson worked as a telemarketer and as a supervisor at Metro Publications. *See* Testimony of Defendant Patterson. While Defendant Patterson testified that he only did telemarketing for single magazine renewals, he admitted that he saw Metro Publications' sales and capping scripts for magazine packages. *Id.*
38. This admission is confirmed by Defendant Patterson's deposition testimony in this action, which was read into the record at trial. As discussed in more detail below, WWRS placed "renewal" calls to consumers in WWRS's database. *See* Testimony of Defendant Patterson. Recordings of WWRS employee David Hampton's sales calls were admitted as Pl. Ex. 3 and played in open court during the testimony of Investigator Wild and Defendant Patterson. The recordings were also played for Patterson during his deposition, which was taken on October 29, 2012. *See* Testimony of Defendant Patterson. In his deposition testimony, which was read into the record at trial, Defendant Patterson admitted as follows:

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21 Q Have you seen scripts like the one
22 David was using anywhere other than the discovery in
23 this case?

24 A No. That's a hacked version. It
25 sounds like an original new account script that's

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1 been cut down to one paragraph. It just has
2 similarities to other scripts.

3 Q What other scripts?

4 A Old new sales scripts.

5 Q At what companies did you see these
6 scripts?
7 A I'm just going off of memory here. I
8 don't remember where I saw it. Things that stick in
9 your head over time.
10 Q Did you work for Henry Aragon at one
11 point?
12 A Yes, I did.
13 Q Did you see similar scripts at Henry
14 Aragon's companies?
15 A Yes.

See Testimony of Defendant Patterson.

39. Defendant Patterson testified at trial that he and Henry Aragon engaged in negotiations for Patterson to purchase Readers Source. The purchase would have included Patterson's taking control of Aragon's sales force and assuming the right to collect on and the responsibility to service all of Aragon's open orders. *See* Testimony of Defendant Patterson. The evidence at trial revealed Patterson to have sufficient business acumen to start a business, enter contracts with clearinghouses to clear orders from publishers, negotiate detailed contracts with various dealers, and determine a pricing scheme for the purchase of multi-year "contracts" with consumers. *See id.* This is not a man who would enter into negotiations for the purchase of a telemarketing business without a basic understanding of the business's sales practices.

ii. The Patterson Defendants Were Repeatedly Informed by Consumers and Others that the Henry Aragon Orders Were Procured through Deceptive Trade Practices

40. Along with his personal knowledge of Henry Aragon's scripts, Defendant Patterson repeatedly received information from consumers and others about Aragon's deceptive telemarketing tactics.

41. WWRS's business records showed that of the 3,987 orders it purchased from Henry Aragon's companies, 1,636, or 41%, were cancelled. *See* Def. Ex. 351.

42. Beginning as early as September 2009, just one month after Defendant Patterson began purchasing orders from Henry Aragon's companies, WWRS began to receive consumer complaints from the Better Business Bureau ("BBB") in which consumers complained that they had been tricked into magazine orders by Henry Aragon's companies. *See* Testimony of Suzanne Bacon and Defendant Patterson. The BBB complaints are consistent with the misrepresentations found in Henry Aragon's scripts, including claims

that the telemarketer had led the consumer to believe that he/she was speaking with his/her current magazine provider:

- September 16, 2009 complaint of consumer Gregory Brunson. *See* Pl. Ex. 26, at MAG:BBB:00047-48.
- January 8, 2010 complaint of consumer Patricia Hove. *See* Pl. Ex. 26, at MAG:BBB:00130-34.
- April 22, 2010 complaint of consumer Eron Leu. Pl. Ex. 26, at MAG:BBB:00177-79.
- May 18, 2010 complaint of consumer Adam Bauchle. *See* Pl. Ex. 26, at MAG:BBB:00022-23.
- August 2, 2010 complaint of consumer Simon Gong. *See* Pl. Ex. 26, at MAG:BBB:00113-14.
- January 26, 2011 complaint of consumer Jerry Foley. *See* Pl. Ex. 26, at MAG:BBB:00107-08.
- February 1, 2011 complaint of consumer Lisa Lasater. Pl. Ex. 26, at MAG:BBB:00174.⁴

43. In June 2010, after observing a pattern of consumer complaints against WWRS, the BBB sent a letter informing WWRS of this pattern and requesting a meeting to discuss the complaints. WWRS did not respond to the letter. *See* Testimony of Suzanne Bacon.

44. WWRS also received at least one credit card dispute pertaining to a consumer whose order was purchased from a Henry Aragon company in or around December 2010, and who claimed that he had ordered magazines from a different company and was subsequently charged by WWRS. Testimony of Defendant Patterson; Pl. Ex. 12, at MAG:WWR:004709; Def. Ex. 353, at line 1831.

45. WWRS continued to purchase and collect on Readers Source and Magazine Connection orders after receiving these consumer complaints. *See* Def. Ex. 353.

iii. WWRS Was in Possession of Audio Recordings Revealing Fraud in the Orders that WWRS Purchased

⁴ All of these consumers' orders were originated by one of Henry Aragon's companies. *See* Def. Ex. 366-A.

46. Along with the specific information that Defendant Patterson received about the Henry Aragon orders, WWRS was in possession of recordings that showed that at least one other of WWRS's dealers was using essentially the same scripts as Aragon's companies in 2010. *See* Testimony of Defendant Patterson, Pl. Ex. 3, "Amanda-Tamara," "Barbara Johnson." The recordings include the following misrepresentations:

- "I'm with the credit and collections department for the publishers, the folks who send out your magazines." Pl. Ex. 3, "Amanda-Tamara."
- "We actually did not call to collect any money. We're receiving complaints from customers getting calls from other companies trying to get them to buy, extend, or renew magazines." Pl. Ex. 3, "Amanda-Tamara."
- "[W]e have you listed as being a preferred customer and receiving your magazines out there at the \$3.99 a week." Pl. Ex. 3, "Barbara Johnson."
- "We are also going to secure your information. . . . "[W]e've had a lot of complaints from our customers. Other companies are calling them, trying to get them to order more magazines." Pl. Ex. 3, "Barbara Johnson."
- New, lower price plan will be reflected in the "the written confirmation we get out there to you." Pl. Ex. 3, "Barbara Johnson."⁵

47. Defendant Patterson testified that his employees reviewed the recorded verifications for the orders that WWRS purchased from its dealers. He also testified that while the recordings WWRS received sometimes contained the sales and capping portions of the call, he directed his employees to review the verification portion only. If the verification was "clean," no further review of the recordings was conducted. *See* Testimony of Defendant Patterson.

⁵ The Barbara Johnson recording provides a good example of how a consumer can be deceived into participating in Patterson's recorded "verification" through the misrepresentation that the telemarketer is lowering the amount of the monthly payment the consumer is currently making. In the capping portion of the call to Barbara Johnson, after being told that she is a preferred customer already making payments to the company, Ms. Johnson indicates that she wants to cancel her magazine package, asking, "How can get out of these books?" Pl. Ex. 3, at 9:53. The telemarketer says that cancellation is not possible and that "the only thing I can do is decrease your payment amount. I can bring it down to \$39.98 and I can take four payments off." *See id.* at 9:57- 10:26. The telemarketer then convinces Ms. Johnson to provide her credit card number. In the recorded verification of this "order," Ms. Johnson appears to agree to a new magazine order, *see* Def. Ex. 368, but the prior portion of the call demonstrates that this was not at all Ms. Johnson's understanding or intention.

48. WWRS employed at least two full-time employees to do collections and customer service. *See* Testimony of Defendant Patterson. According to Defendant Patterson's testimony, WWRS received just 20-30 consumer calls per day. *See id.* However, Patterson did not instruct his employees to use their spare time to review the sales/capping calls that were in WWRS's possession. *See id.*
49. Finally, Defendant Patterson's own verification script reveals that honesty with consumers was not a priority. The script that Patterson provided to his dealers states, "We verify every order like this because we order the magazines from the publishers for the full term in advance. Therefore we ask you to complete all ____ payments" *See* Testimony of Defendant Patterson; Def. Ex. 360. However, as Patterson admitted at trial, WWRS did not pay for the consumers' magazines in advance.
50. In light of the above evidence, Defendant Patterson's testimony that he was unaware of Henry Aragon's deceptive tactics is not credible. The evidence demonstrates that Patterson made a willful, deliberate effort to remain ignorant of the fraud, while profiting from it.

D. The Patterson Defendants Aggressively Collected on the Orders They Purchased from Henry Aragon's Companies

51. Defendant Patterson admitted that WWRS's entire business model is based on collecting as many payments as possible from each customer. *See* Testimony of Defendant Patterson. Because WWRS pays, on average, more than \$300 per order, it cannot make a profit unless it collects more than that amount from each consumer.
52. In its collection efforts, WWRS claimed to have a binding contract with the consumer that was not subject to cancellation outside of WWRS's stated cancellation period. *See* Testimony of Defendant Patterson; Pl. Ex. 12, at MAG:WWR:004710.
53. Consumer testimony established that WWRS did not always honor its stated cancellation policy and aggressively collected on its accounts, even when magazines were not being provided to the consumers and when it was clear that the consumer did not want magazines.
54. Defendant Patterson testified that under WWRS's cancellation policy, the consumer is allowed to cancel within 10 days of the order or within 7 days of receipt of the confirmation letter. *See* Testimony of Defendant Patterson.

55. Consumer Patricia Hove made two attempts to cancel within the ten-day period, but WWRS did not allow her to cancel. Hove's "order" was placed on December 30, 2009. *See* Testimony of Patricia Hove; Def. Ex. 353, at line 1432. Hove testified that within ten days of the "order," on January 8, 2010, she mailed her written complaint, which detailed how she had been tricked into the recorded "verification," to the BBB. Hove further testified that *before* sending her written complaint to the BBB, she called WWRS and spoke with Defendant Patterson, who refused to cancel her order.
56. WWRS waited nearly an entire year to respond to Ms. Hove's BBB complaint. *See* Pl. Ex. 26, at MAG:BBB:00130, during which time it continued to withdraw \$49.95 per month from her credit card account. WWRS never cancelled Hove's order, and instead collected a total of \$1,199.52 from her over the course of two years. *See* Testimony of Defendant Patterson; Def. Ex. 353, at line 1432.
57. WWRS's records show that, as of the time of trial, WWRS had ordered just \$63.71 worth of magazines for Ms. Hove. *See* Testimony of Brian Patterson; Def. Ex. 354, at p. 18. Further, at the time of trial, more than three years after the original "order," WWRS's records also reflect a balance of \$55.86 in magazine orders still due to be made for Hove. *Id.*
58. When asked about Ms. Hove's cancellation attempts at trial, Defendant Patterson denied that he had spoken with Hove and suggested that it was Hove's fault that WWRS didn't cancel the order, because she made her written cancellation request within the 10-day period to the BBB, and not to WWRS. Defendant Patterson took this position even though he acknowledged that WWRS received a copy of the BBB complaint, which was signed and dated January 8, just a few days after the BBB received it. *See* Testimony of Defendant Patterson.
59. As noted above, consumer Michael Wolf testified that he was confused by his conversation with Henry Aragon's telemarketers, but he had a bad feeling about the call almost as soon as he hung up. When Wolf saw that WWRS had charged him over \$90, he went to his bank to cancel his credit card and get the charges reversed. He did so within ten days of the "order," on the weekend after he received the original phone call. *See* Testimony of Michael Wolf.
60. Instead of cancelling Mr. Wolf's order, WWRS sent him repeated bills over the course of the next several months and referred him to a collections agency, which made repeated, harassing calls to Wolf and his girlfriend. *See* Testimony of Michael Wolf; Pl. Ex. 20, at MAG:WOLF:000002-4. The bills claimed that Wolf owed \$1,199.52. *See* Pl. Ex. 20, at MAG:WOLF:000002-4. Though WWRS attempted to collect over \$1,000 from Wolf,

WWRS never ordered any magazines for him. Testimony of Defendant Patterson; Def. Ex. 354.

61. Further evidence of WWRS's failure to follow its cancellation policy was provided by the testimony of consumer Anetta Brangers. Ms. Brangers, who was not solicited by a Henry Aragon company (*see* Def. Ex. 353), testified about her attempts to cancel an order that was originated by another one of WWRS's "dealers."
62. Ms. Brangers' confirmation letter from WWRS was dated June 24, 2009. *See* Testimony of Anetta Brangers; Pl. Ex. 8, at MAG:BRANGERS:000002. Beginning a couple of days after receiving this letter, Brangers placed repeated telephone calls to WWRS's phone number, 866-570-2900; Pl. Ex. 8, at MAG:BRANGERS:000002. *See* Testimony of Anetta Brangers. WWRS did not answer the telephone, nor did they respond to the messages that Brangers left. *See* Testimony of Anetta Brangers. Brangers' cell phone records confirm that she placed six calls to WWRS within WWRS's cancellation period: one call on June 29, 2009; four calls on June 30, 2009; and one call on July 1, 2009. Pl. Ex. 7, at MAG:WWR:03011-15.
63. Ms. Brangers testified that she finally got in touch with WWRS in the winter of 2009-2010. At that time, she was informed that she could not cancel her order because the cancellation period had passed. She informed WWRS that she had called repeatedly within the cancellation period, but WWRS maintained that there was nothing they could do and that Brangers was under contract. At some point, Brangers attempted to change her magazine selection through WWRS. As she explained in her testimony, she did so because she felt that she was stuck in her "contract" and wanted to make the best out of the situation. *See* Testimony of Anetta Brangers.
64. A few months later, Ms. Brangers filed a complaint with the BBB against WWRS. *See* Testimony of Anetta Brangers. Brangers sent the BBB a copy of the cell phone records demonstrating her repeated calls to WWRS within the cancellation period. *Id.*; Pl. Ex. 7, at MAG:WWR:03011-15. Per the BBB's usual process, the records were forwarded to WWRS, who maintained them in their files and later produced them to the Attorney General. *See* Testimony of Suzanne Bacon and Defendant Patterson.
65. Even after receiving proof of Ms. Brangers' attempts to cancel within the cancellation period, WWRS continued to refuse cancel Brangers' order, and continued to attempt to collect from her. *See* Testimony of Anetta Brangers.
66. Brangers was forced to cancel her credit card. WWRS subsequently sent her to a collections agency. *See* Testimony of Ms. Brangers.

III. “RENEWAL” CALLS PLACED BY WWRS EMPLOYEE DAVID HAMPTON

A. David Hampton Used a Truncated Version of the Henry Aragon Scripts

67. Defendant Patterson hired his cousin, David Hampton to place “renewal” calls to consumers in WWRS’s database. *See* Testimony of Defendant Patterson; Deposition of David Hampton, Nov. 15, 2012. Patterson testified that Hampton was the only employee of his who placed “renewal” calls to consumers. *See* Testimony of Defendant Patterson.
68. Defendant Patterson testified that Defense Exhibit 356 contains WWRS’s records of the “renewal” orders sold by David Hampton. *See* Testimony of Defendant Patterson; Def. Ex. 356. These records show that Hampton was originating new orders on a regular basis from September 2010 through May 2011. Def. Ex. 356.
69. Audio recordings of Hampton’s phone calls demonstrate that Hampton was using an abbreviated version of the sales and capping scripts used by Henry Aragon’s companies. *See* Pl. Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George,” “Betty 5-18-11”; Pl. Ex. 1; Pl. Ex. 25; Testimony of Defendant Patterson. Specifically, the pitch used by Hampton contains the following false statements that are also found on Henry Aragon’s scripts:
- “I’m with the credit department with the publishers that send out your magazines.” *See* Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George,” “Betty 5-18-11.”
 - “I’m not calling to collect any money.” *See* Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George,” “Betty 5-18-11.”
 - “I was just going through your files and noticed that some of your magazines had set to terminate prematurely on you. In short you are receiving what you’re paying for; they just didn’t enter your 60 months into the computer for you correctly.” *See* Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George,” “Betty 5-18-11.”
 - Tells consumer not to order more magazines. *See* Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George,” “Betty 5-18-11.”
 - “With what you do have coming, plus your 60 months, you are set with us for quite some time.” *See* Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George,” “Betty 5-18-11.”

- “I’m going to get you out our new listing.” *See* Ex. 3, “Betty 1-19-11,” “Leonard,” “Joan-Cecile,” “George.”
- Will use CVV code to place a “privacy block” on the consumer’s account because “we’ve been getting a lot of calls from our customers stating that other companies have been calling trying to get them to renew or extend.” *See* Ex. 3, “Leonard,” “Joan-Cecile,” “George.”
- Will lower the customer’s monthly payments. *See* Ex. 3, “Leonard,” “Joan-Cecile,” “George.”

70. The evidence before the Court establishes that the pitch reflected on Pl. Ex. 3 is the pitch Hampton used when placing “renewal” calls on behalf of WWRS. The recordings on Plaintiff’s Ex. 3 were made over a five-month period – in January, February, and May of 2011. In his deposition, Hampton identified a different script as the one Defendant Patterson gave him to use, but when asked whether he had ever used that script, Hampton testified that he could not remember. Deposition of David Hampton, Nov. 15, 2012 (“Hampton Deposition”), at 16:6-21; 39:2-6. Thus, Pl. Ex. 3 is the only direct, credible direct evidence of the script that Hampton used.

71. The recordings on Pl. Ex. 3 demonstrate that Hampton, using the truncated version of the Henry Aragon scripts, was successful in tricking consumers into providing or confirming their credit card information. Further, WWRS’s records show that at least one of the above calls, the call to “Cecile,” resulted in a sale. *See* Ex. 3, Joan-Cecile, at 32:55-end); Def. Ex. 356, at line 203.

B. Defendant Patterson Either Knew or Remained Willfully Ignorant that Hampton Was Procuring Orders Through Deceptive Trade Practices

72. The evidence before the Court establishes that Defendant Patterson likely knew that Hampton was employing the deceptive trade practices reflected on Pl. Ex. 3.

73. In Defendant Patterson’s July 2011 sworn testimony to the Attorney General, he testified that WWRS had “tried using [Magazine Connection’s] script.” *See* ¶ 32, above.

74. Defendant Patterson testified that he provided Hampton a script that did not contain misrepresentations and directed Hampton to use that script. *See* Testimony of Defendant

Patterson; Pl. Ex. 10. However, the script identified by Patterson is designed for the renewal of a single magazine for four years, *see* Pl. Ex. 10, while Hampton sold “renewals” of multiple magazines with multi-month payment plans, *see* Testimony of Defendant Patterson; Pl. Ex. 3; Def. Ex. 356. Thus, Patterson knew that Hampton would not be following Pl. Ex. 10 word for word and would have to diverge from it.

75. David Hampton, in his deposition, also testified that Defendant Patterson provided him Pl. Ex. 10 and directed him to use it. However, Hampton’s testimony contained multiple inconsistencies. For example, before identifying Pl. Ex. 10 (marked as Ex. 1 to the deposition) with any certainty, Hampton repeatedly testified that he couldn’t say for sure that it was the script that Patterson gave him, *see* Hampton Deposition, at 16:6-21, 18:9-12, 22:8-17, 39:2-12. Also, Hampton first testified that he could not recall ever being reprimanded for failing to follow Pl. Ex. 10, and then later testified that he was told “a lot” that his sales weren’t going through because he didn’t stick to the script. *Id.* at 19:20-23, 37:25-38:5, 38:14-19.
76. Even if Defendant Patterson did provide Pl. Ex. 10 to Hampton, Patterson’s claimed lack of knowledge of the pitch Hampton actually used is not credible.
77. Defendant Patterson’s testimony about WWRS’s renewal sales evolved during the course of the Attorney General’s investigation and the trial, but it has never been credible. Investigator Wild testified that she visited WWRS and interviewed Defendant Patterson on December 6, 2010. At this time, Defendant Patterson told Investigator Wild that WWRS did no new sales and that its sole business was the purchase of orders originated by other companies. *See* Testimony of Investigator Wild.
78. At trial, Defendant Patterson was questioned about WWRS records showing new orders originated by WWRS in November and December of 2010, including a new order on December 6, the very day Defendant Patterson told Investigator Wild that WWRS did no new sales. Defendant Patterson testified that he had reviewed WWRS’s records and determined that the December 6, 2010 order was not a new order, but a “fix up” of an order purchased from one of Henry Aragon’s companies.
79. However, WWRS’s records reflect that it was regularly originating new orders in November and December of 2010, with 43 new orders in November and 34 new orders in December. Def. Ex. 356.
80. Defendant Patterson had every reason to know about Hampton’s deceptive tactics. At all relevant times, WWRS was in possession of the recordings of Hampton using the deceptive pitch found in Pl. Ex. 3. *See* Testimony of Defendant Patterson. Also,

WWRS's records showed that 43% of Hampton's orders were either cancelled or never billed. *See* Def. Ex. 355⁶; Testimony of Defendant Patterson.

81. Hampton testified that he learned the pitch reflected on Ex. 3 from his father, Dale Leonard. Hampton Deposition, at 17:19-18:4; 30:12-15, 40:17-41:3. Consistent with Henry Aragon's testimony that Aragon first received his scripts and learned the three-step process from Leonard, Hampton testified that Leonard was "kind of the founder of all this stuff, the magazine stuff." *See id.* at 17:19-18:4. Patterson admitted that he also bought orders from Leonard, a man who, in the words of his son, was a "real crooked individual." *See id.* at 51:18-52:5; Testimony of Defendant Patterson.
82. Further, the evidence established that Dale Leonard's scripts were used not just by Defendant Patterson's cousins Henry Aragon and David Hampton, but by former Defendant Lucille Makatura, Patterson's aunt and Aragon's mother; former Defendant Robert Makatura, Lucille Makatura's husband; and former Defendants Lucille Aragon and Dorothy Gonzales, Patterson's cousins and Aragon's sisters. *See* Testimony of Investigator Wild. The same basic scripts were also used by another one of WWRS's dealers, *see* Pl. Ex. 3, and, as described in more detail below, by Patterson's mother, Yvonne Patterson. Patterson's purported unawareness that Hampton might use the script used by so many of his family members is not credible.
83. Finally, Hampton had previously spent time in prison for forgery, a fact that should have been a red flag to an employer who would be giving Hampton access to his consumer database and allowing him to gather consumer financial information. *See* Hampton Deposition, at 43:20-22.
84. Notwithstanding all of the red flags, Patterson did not identify any steps that he took to make sure Hampton was properly supervised or disciplined for going off script.
85. If Patterson did not know what pitch Hampton was using, this could only be because Patterson deliberately turned a blind eye to the fraud, while profiting from it.

IV. THE PATTERSON DEFENDANTS VIOLATED THE COURT'S P.I. ORDER

86. Effective November 4, 2011, this Court's P.I. Order requires the Patterson Defendants to make their "best efforts" to ensure that none of their dealers engage in certain specified deceptive trade practices. *See* para. 4, above.

⁶ Def. Ex. 355 shows that 110 of the Hampton orders were sold but not billed, and an additional 38 were cancelled. Thus, according to WWRS's records, 148 of the 343 total orders sold, or 43%, were either cancelled or never billed.

87. The Patterson Defendants have not made their best efforts to avoid purchasing orders from dealers who engage in the conduct enjoined in the Court's P.I. Order.
88. According to Defendant Patterson's testimony, the P.I. Order did not prompt him to change WWRS's policy of listening to only the verification portion of the recordings it received from its dealers, and not the sales and capping portions. *See* Testimony of Defendant Patterson.
89. Within four months of the P.I. Order, the Patterson Defendants were in possession of recordings showing that one of their dealers was continuing to use a variation on the scripts used by Henry Aragon's companies. Specifically, the pitches used by this dealer included the following false statements:
- "I'm with the credit and collections department. I work for the publishers who send out your magazines."
 - "I'm not calling to collect any money"
 - "The reason for my call is we have had several complaints from our customers that other companies have been calling them trying to get them to buy, extend, or renew their magazines. . . . Please don't get any more."
 - "With what you do have coming plus your 60 months you're set for quite some time at the \$3.99 a week."
 - "I see here that you're receiving your magazines at the \$3.99 a week."
 - "The \$3.99 is not for each one. It covers all of them as a group, and they have guaranteed that in writing for you for the full 60 months and then they have to stop, is that the way you understood it?"

Ex. 3, "Laurel."

90. The Court heard testimony from Timothy Fanning, who worked for Angels, LLC, a company in Missouri owned by Defendant Patterson's mother, Yvonne Patterson. *See* Testimony of Timothy Fanning; Testimony of Defendant Patterson. Fanning worked for Angels, LLC for a two or three week period during the spring of 2012. *See* Testimony of Timothy Fanning.
91. Mr. Fanning testified that Angels, LLC's telemarketers pretended to have a pre-existing business relationship with the consumers they called. Fanning also testified that when he

worked at the company, he wrote down a true and correct copy of the script he was provided by the company. Fanning read this script into the record at trial. The script is essentially identical to Henry Aragon's sales script, containing the following false statements:

- "I'm with the credit and collection department. I work for the publishers who send out your magazines package program you're currently paying on."
- "I'm not calling to collect any money"
- "We were just going through your files and noticed that some of your magazines were set to terminate prematurely on you."
- "In short you are receiving what you paid for just not your 60 months."
- "So they thought I should call you just in case some of those other companies call and try to get you to order more."
- "Please don't get anymore, because with what you have coming your 60 months you are set for quite some time at \$3.99 a week."

See Testimony of Timothy Fanning.

92. Mr. Fanning also testified that he was provided more than one copy of the script described above, and that one of them identified the company as World Wide Readers Service. *See* Testimony of Timothy Fanning.

93. Mr. Fanning testified that he decided to leave Angels, LLC after he developed a full understanding of how they were deceiving consumers. After leaving Angels, LLC, Fanning posted his copy of the script on an online website that collects information about scams. Fanning also contacted local law enforcement and the Federal Trade Commission to inform them about Angels, LLC's business practices. *See* Testimony of Timothy Fanning.

94. Mr. Fanning was subsequently contacted by the Colorado Attorney General's Office. After speaking with the Attorney General's Office, Fanning reviewed the Attorney General's complaint in the present action, which was posted online in a press release. *See* Testimony of Timothy Fanning. Fanning testified that the allegations in the complaint were the same deceptive practices he observed at Angels, LLC. *See id.*

95. Defendant Patterson acknowledged that, at his October 29, 2012 deposition in this action, he learned of Fanning's allegations and was shown a copy of the script that Fanning had copied from Angels, LLC. *See* Testimony of Defendant Patterson. After being confronted with this information by the Attorney General, Defendant Patterson has continued to purchase orders from Angels LLC up through the time of trial and has still not asked his mother for a copy of Angels, LLC's scripts. *See* Testimony of Defendant Patterson.

FINDINGS RELEVANT TO RESTITUTION AND DISGORGEMENT

96. WWRS has collected \$900,752.15 from consumers whose orders WWRS purchased from Henry Aragon's companies. *See* Testimony of Defendant Patterson; Def. Ex. 351.

97. Because most Henry Aragon orders had a two-year payment plan and WWRS ceased purchasing orders from Aragon in summer 2011, it is possible that WWRS is continuing to collect on some Henry Aragon orders.

98. WWRS paid \$771,599.11 to Henry Aragon's companies for the orders it purchased. *See* Def. Ex. 351.

99. Although the State has entered into a consent judgment with Henry Aragon and his companies that included a restitution component, there is no possibility of a double recovery of consumer restitution. Defendant Aragon testified that his companies sold magazine packages to consumers before they began selling their "contracts" to WWRS, and that during this period and during the time period that "contracts" were sold to WWRS, Henry Aragon's companies collected money directly from consumers. Aragon testified that his companies collected substantially more money directly from consumers than Aragon received from the Patterson Defendants in return for the right to collect on the "contracts." Thus, even if the State were to allocate the entirety of the funds due to be received from Henry Aragon to consumer restitution, such restitution would be substantially less than the amount that Aragon collected directly from consumers, and would not cover the other moneys collected by WWRS.

100. For those consumers whose orders were originated by WWRS employee David Hampton, the State seeks complete restitution of all moneys paid by each consumer to WWRS. WWRS has collected \$107,258.82 from these consumers.

101. Because some of the David Hampton orders had a payment plan of two years or more, *see* Def. Ex. 356, it is possible that WWRS is continuing to collect on some of them.

CONCLUSIONS OF LAW

I. VIOLATIONS OF THE CCPA

102. As an initial matter, the Court addresses arguments raised by the Patterson Defendants related to the fact that the Patterson Defendants do not actively solicit consumers in Colorado. This Court's jurisdiction is based upon C.R.S. sections 6-1-103 and 110, which put no geographic limitations on the Court's authority apart from the requirement that a portion of the deceptive trade practices must have taken place in Colorado. *See id.* The CCPA authorizes restitution for "any person injured by means of any" deceptive trade practice and disgorgement of "any unjust enrichment by any person through the use or employment of any deceptive trade practice." C.R.S. section 6-1-110(1) (emphasis added). The CCPA's penalties provision is directed not at compensating injured consumers, but at punishing the wrongdoer. *May Dep't Stores Co. v. State*, 863 P.2d 967, 972 (Colo. 1993).
103. The Court notes that telemarketing at issue in this case took place in Denver, Colorado, that consumer funds were collected and received in Colorado, and that some Colorado consumers fell through the cracks of WWRS's policy of attempting to avoid Colorado consumers. Allowing telemarketers to avoid liability for deceptive trade practices by targeting consumers outside the State would result in inefficient, piecemeal enforcement of the law, and would likely result in violators of the law reaping the benefits of illegal conduct. Such a result would be inconsistent with the purposes of the CCPA. *Cf.* "Order – All Pending Motions," *State v. General Steel Domestic Sales, LLC*, et al., Dist. Ct. for Jefferson County, Colorado, Sept. 29, 2004, at pp. 2-7.
104. Civil law enforcement actions brought by the State under the CCPA serve to protect the public and ensure full and fair competition. *See, e.g., May Dep't Stores Co. v. State*, 863 P.2d 967, 980 (Colo. 1993) (noting that the CCPA was enacted to protect the public and abate evils arising from business pursuits); *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 146 (Colo. 2003) ("The CCPA deters and punishes businesses which commit deceptive trade practices in their dealings with the public by providing prompt, economical, and readily available remedies against consumer fraud."); *People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 107, 493 P.2d 660, 665 (Colo. 1972) (declaring that the CCPA was "clearly enacted to control various deceptive trade practices in dealing with the public and as such is obviously designed to both declare and enforce an important public policy").
105. The Colorado Supreme Court has a long history of giving the CCPA a "liberal construction" in accordance with its "broad remedial relief and deterrence purposes." *Hall v. Walter*, 969 P.2d 224, 230 (Colo. 1998). In interpreting the CCPA, the Court should "avoid any interpretation that 'defeats the legislative intent.'" *Gen. Steel Domestic*

Sales, LLC v. Hogan & Hartson, LLP, 230 P.3d 1275, 1281 (Colo. App. 2010) (internal citations omitted).

106. The State has asserted the five claims for relief against the Patterson Defendants
- i. In violation of C.R.S. § 6-1-105(1)(c), Knowingly makes false representations as to affiliation, connection, or association with or certification by another.
 - ii. In violation of C.R.S. § 6-1-105(1)(b), Knowingly makes false representations as to the source, sponsorship, approval, or certification of goods, services, or property.
 - iii. In violation of C.R.S. § 6-1-105(1)(e), Knowingly makes false representations as to the sponsorship, approval, status, affiliation, or connection of a person with goods, services, or property.
 - iv. In violation of C.R.S. § 6-1-105(1)(l), Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions.
 - v. In violation of C.R.S. § 6-1-105(1)(u), Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction.

107. The State must show the following to establish a violation of the CCPA: (1) the defendant engaged in an unfair or deceptive trade practice; (2) the challenged practice occurred in the course of the defendant's business; and (3) the challenged practice significantly impacts the public as actual or potential consumers of the defendant's services. *Hall v. Walter*, 969 P.2d 224, 235 and n.10 (Colo. 1998).

A. Henry Aragon's Companies Violated the CCPA In Procuring the Orders They Sold to the Patterson Defendants

108. The Court finds and concludes that the Patterson Defendants purchased magazine package orders from former Defendants Henry Aragon and his companies, who were engaged in deceptive trade practices in the course of their business, and that the challenged practices significantly impact the public as actual or potential consumers of their services.

i. Claims One Through Three of Plaintiff's First Amended Complaint (C.R.S. § 6-1-105(c), (b), and (e))

109. The Court finds and concludes that Henry Aragon's scripts violated C.R.S. § 6-1-105(c) because they contained false representations as to affiliation, connection, and association with the company that was providing magazines to the consumers Henry Aragon's telemarketer's called. These false representations include all of the statements listed in ¶ 18, above, as well as the statements from the "capping" pitch in which the consumer is told he/she is a "preferred customer receiving your magazines at the \$3.99 a week," that the purpose of the call is "to get you out our new listing," that the company will put a "privacy block" on the consumer's account "because we've been getting a lot of phone calls from our customers stating that they're getting calls from other companies trying to get them to buy more," and that the telemarketer needs the consumer's credit card expiration date "again."

110. The Court finds and concludes that Henry Aragon's scripts violated C.R.S. § 6-1-105(b) because they contained false representations as to the sponsorship, approval, and certification of their services by magazine publishers. These false statements include, "I'm with the credit department with the publishers that send out your magazines," and "the publishers wanted to make sure you are receiving [sic] you're supposed to." The script also falsely purports to describe "the way the publishers handle the billing," when in fact the billing structure is Henry Aragon's and the Patterson Defendants' billing structure and has nothing to do with the publishers.

111. The Court finds and concludes that the representations that violated C.R.S. § 6-1-105(c) and (b) also violated C.R.S. § 6-1-105(e) because they were false statements as to Henry Aragon's companies' status, affiliation, and connection with magazine publishers and other companies that may have been providing magazines to the consumers, and as to such companies' sponsorship and approval of the services offered by Henry Aragon's companies.

ii. Claim Four of Plaintiff's First Amended Complaint

112. The Court finds and concludes that Henry Aragon's scripts violated C.R.S. § 6-1-105(l) because they contain false and misleading statements concerning the price of goods and services and the reasons for and existence of price reductions. In the "capping" pitch, the telemarketer tells the consumer that he is calling to reduce the price of magazines the consumer is already receiving and paying for, but no such price reduction exists. On the contrary, the consumer is not already making payments to the company; the claimed "price reduction" is a ruse designed to deceive the consumer into

participating in the recorded verification, which the consumer believes is a verification of the new, lower price, but which will later be used to claim that the consumer entered into an “oral contract” for a brand new magazine package.

113. Further, in describing the payment plan, *i.e.*, paying for three months at a time rather than paying weekly or for six or twelve months at a time, the capping pitch tells the consumer that the company will “leave your billing at the three months which will save you more money” and concludes, “so I just saved you a couple hundred dollars.” On the face of the script, paying for three months at a time as opposed to any other payment plan does not result in the consumer’s paying less money.

114. The Court finds and concludes that Henry Aragon knew that the statements referenced above were false.⁷

iii. Claim Five of Plaintiff’s First Amended Complaint

115. The Court finds and concludes that Henry Aragon’s scripts violated C.R.S. § 6-1-105(u) because they failed to disclose material information concerning the company’s services with the intent to induce consumers into participating in the recorded verification. The information that was not disclosed was known to Henry Aragon at the time of the transactions at issue. The material omissions include the facts that telemarketer is not, in fact, calling from the credit department with the publishers, that the company is not the consumers’ current magazine company, that the consumer is not currently obligated to pay the company money, and that the company is not lowering the consumer’s payments.

116. The above-described false and misleading statements and material omissions had the capacity or tendency to, and in fact did, deceive consumers into believing they were talking with their current magazine provider or with an affiliated, connected, or associated company, and that the purpose of the call was to confirm information about a current magazine account and lower the consumers’ payments on that account. *See Rhino Linings*, 62 P.3d at 147 (“Although we have not previously defined ‘false representation’ within the context of the CCPA, we have discussed the types of deceptive trade practices that the CCPA seeks to prohibit. Considering our precedent and decisions of other jurisdictions, we conclude that a false representation must either induce a party to act, refrain from acting, or have the capacity or tendency to attract consumers.”).

⁷ Plaintiff’s Fourth Claim for Relief, under C.R.S. §6-1-105(1), does not contain the requirement that the defendant act “knowingly.” In the present case, however, while it did not need to prove the “knowingly” element with regard to this claim for relief, the State has done so.

B. WWRS violated the CCPA In Procuring Its Renewal Orders

117. The Court finds and concludes that WWRS engaged in deceptive trade practices in the course of its business and that the challenged practices significantly impact the public as actual or potential consumers of WWRS's services.

i. Claims One Through Three of Plaintiff's First Amended Complaint (C.R.S. § 6-1-105(c), (b), and (e))

118. The Court finds and concludes that the pitch used by Hampton violated C.R.S. § 6-1-105(c) because it contained false representations as to affiliation, connection, and association with publishers. This includes false representations, "I'm with the credit department with the publishers that send out your magazines," "I'm not calling to collect any money," "I was just going through your files and noticed that some of your magazines had set to terminate prematurely on you," "[T]hey just didn't enter your 60 months into the computer for you correctly," "With what you do have coming, plus your 60 months, you are set with us for quite some time," and the representation that WWRS will place a privacy block on the consumer's account because "we've been getting a lot of calls from our customers stating that other companies have been calling trying to get them to renew or extend."

119. The above statements also violated C.R.S. § 6-1-105(b) because they contained false representations as to the source, sponsorship, approval, and certifications of WWRS's services by magazine publishers. The above statements also violated C.R.S. § 6-1-105(e) because they were false statements as to WWRS's status, affiliation, and connection with magazine publishers and approval and sponsorship of WWRS's services by publishers.

120. The Court finds and concludes that Hampton and the Patterson Defendants knew that the above statements were false.

ii. Claim Four of Plaintiff's First Amended Complaint

121. The Court finds and concludes that the pitch used by Hampton violated C.R.S. § 6-1-105(l) because it a false and misleading statement concerning the price of goods and services and the reasons for and existence of price reductions. The pitch tells the consumer that WWRS is lowering the consumer's monthly payments, but no such price reduction exists. On the contrary, the claimed "price reduction" is a ruse designed to deceive the consumer into participating in the recorded verification, which the consumer believes is a verification of the new, lower price, but which will later be used to claim that the consumer entered into an "oral contract" for a brand new magazine order.

122. Unlike Plaintiff's other claims for relief, C.R.S. section 6-1-105(l) does not require that the Defendant act "knowingly." Therefore, the fact that the false and misleading statements were made is, in itself, sufficient to establish the Patterson Defendants' liability for these violations. However, the evidence before the Court establishes that the Patterson Defendants and Hampton knew that the purpose of Hampton's calls was not to lower the consumers' current magazine payments, but to sign them up for a brand new "contract" for magazines.

iii. Claim Five of Plaintiff's First Amended Complaint

123. The Court finds and concludes that the pitch used by Hampton violated C.R.S. § 6-1-105(u) it fails to disclose material information concerning WWRS and its services. The information that was not disclosed was known to Hampton and the Patterson Defendants at the time of the transactions at issue and the omission was intended by them to induce consumers into participating in the recorded verification. The material omissions include the facts that Hampton was not, in fact, calling from the credit department with the publishers; that WWRS was not using the consumer's credit card information to place a privacy block on the consumer's account; and that WWRS was not calling to lower the consumers' payments on a current order.

124. The above-described false and misleading statements and material omissions had the capacity or tendency to, and in fact did, deceive consumers into believing they were talking with a magazine publisher and that the purpose of the call was to correct information about a current magazine account, lower the consumers' payments on that account, and place a privacy block on the account. *See Rhino Linings*, 62 P.3d at 147.

C. The Recorded "Verifications" and "Confirmation Letters" Do Not Eliminate the Deceptive Trade Practices

125. The recorded "verifications" made by the telemarketers and "confirmation letters" sent by WWRS do not eliminate the CCPA violations and the essentially fraudulent nature of the "contracts" that WWRS collected on.

126. First, with reference to the orders purchased from Henry Aragon's companies, Defendant Patterson testified that he provided his dealers a verification script that said, "[Y]ou understand this is a new order with our company." *See* Testimony of Defendant Patterson; Def. Ex. 360. However, the recorded verifications of Henry Aragon orders that Defendants submitted to the Court demonstrate that this statement was frequently omitted from the verification, a fact that did not keep WWRS purchasing the orders. *See*

Def. Exs. 304 (Patricia Hove), 307, 331 (Steven Runnels), 334 (Jerry Foley), 340 (Lisa Lasater), 372 (Stuart Eisman), 374 (Bobby Boyd).

127. More importantly, the recorded “verification” and “confirmation letter” in the present case are not “disclosures” or “disclaimers” in the traditional sense of these terms, but are instead the final steps in a process deliberately designed to fabricate evidence of a “contract” under which the consumer is obligated to pay money to WWRS.

128. In *May Dep’t Stores*, the Colorado Supreme Court held:

Disclaimers can be ineffective and may be disregarded by a consumer who is confused by the disclosure. . . . An advertiser should not be permitted to continue to make false advertising claims by asserting that it has disclosed its method for deception. Thus, *when advertising is false, disclosures will not eliminate the underlying deception.*

May Dep’t Stores, 863 P.2d at 979. (emphasis added) (internal citations omitted).

129. In a case where the trial court concluded that “the solicitation as a whole was not deceptive,” the Colorado Court of Appeals has stated that disclosure “may eliminate an otherwise deceptive trade practice.” *State ex rel. Suthers v. Mandatory Poster Agency, Inc.*, 260 P.3d 9, 15 (Colo. App. 2009). The present case stands in stark contrast to *Mandatory Poster*. In that case, “[t]he trial court concluded that defendants’ solicitations, posters, and disclaimers were not deceptive.” *Id.*

130. Here, the entire “solicitation” is a scheme to extract the consumer’s credit card number and trick the consumer into believing that she has been called by her current magazine provider to lower the payments she is already making. Far from a non-deceptive solicitation that is clarified by a subsequent disclosure, the three-step process is designed to deceive the consumer into participating in the recorded “verification,” and it contains specific, scripted lines designed to trick the consumer into disregarding the “confirmation letter.”

D. Defendant Patterson Is Individually Liable for the Deceptive Trade Practices

131. Individual liability of officers and agents of a corporation or LLC is proper under the CCPA. *Hoang v. Arbess*, 80 P.3d 863, 870 (Colo. App. 2003). Personal liability may be imposed where it is shown that the officer of a corporation or LLC directly participated in the deceptive trade practices. *Id.* at 868. This direct participation may be shown in a number of ways, including conception or authorization of the deceptive

conduct, cooperation in the conduct, specific direction of the conduct or sanction of the conduct. *Id.* at 868.

132. In the present case, there is no dispute that Defendant Patterson was the sole owner of WWRS during the relevant timeframe, and that all profits from the company flowed to him. Nor is there any dispute that Patterson conceived and designed WWRS's business model and formulated WWRS's policies and procedures for 1) determining who WWRS would accept as a "dealer," 2) customer service, 3) cancellations and collections, and 4) renewal sales.

i. Defendant Patterson Is Liable for the CCPA Violations Used to Procure the Henry Aragon Orders

133. With regard to orders purchased from Henry Aragon's companies, the facts establish that Patterson authorized, cooperated in, and, at the very least, knew of and sanctioned the fraudulent conduct by Aragon's telemarketers. WWRS operated essentially as a debt collector, collecting money over the long term and providing large cash infusions up front to help Aragon keep his doors open and his telemarketers flush with consumer leads.

134. Patterson's admissions establish that he was familiar with Henry Aragon's scripts. Patterson's familiarity with Aragon's business practices is confirmed by his prior dealings with Aragon, including as an employee of Metro Publications, a purchaser of Aragon's consumer "lead lists," and a potential purchaser of Readers Source.

135. Patterson did not deny that he was personally aware of the repeated BBB complaints in which consumers solicited by Henry Aragon's companies claimed they had been deceived into a new "contract" by a company they thought was their current magazine provider. And Patterson did not respond to the BBB's June 2010 request for a meeting with WWRS to discuss the pattern of complaints the BBB had observed. Patterson did not deny that the BBB sought this meeting; rather, the evidence shows that Patterson consciously chose to ignore the BBB's request for a meeting.

136. Further, Patterson acknowledged that WWRS was in possession not just of his dealers' recorded verifications, but also of the parts of the calls that preceded the "verification" – the first two steps of the three-step process. However, Patterson's testimony was that he instructed his employees to review only the "verification" portion of the recordings.

137. Notwithstanding his possession of all this information, Patterson continued to aggressively collect on the Henry Aragon orders and continued to purchase new orders from Henry Aragon companies.
138. Even if Patterson’s dubious claim of lack of knowledge is to be believed, the facts show that he willfully and deliberately closed his eyes to the clear evidence that the Henry Aragon orders were procured by fraud. Under longstanding Colorado law, “[N]o man having knowledge of . . . signs of suspicion . . . is at liberty to close his eyes, remain willfully blind to the facts, and by his negligence make himself the instrument of consummating a fraud against which the injured party might otherwise have protected himself. *Tibbetts v. Terrill*, 44 Colo. 94, 106 (Colo. 1908).
139. The principle set forth in *Tibbetts* has been repeatedly relied upon by the Tenth Circuit, which “established nearly forty years ago . . . that one may not willfully and intentionally remain ignorant of a fact, important and material to his conduct, and thereby escape punishment.” *United States v. Delreal-Ordonez*, 213 F.3d 1263, 1268 (10th Cir. 2000) (internal citations omitted); citing *Griego v. United States*, 298 F.2d 845, 849 (10th Cir. 1962). The 10th Circuit has approved the following jury instruction on the “knowing” element for criminal fraud charges:
- [T]he element of knowledge may be established by proof that a defendant deliberately closed his eyes to what otherwise would have been obvious to him. In other words, the requirement that the defendant acted knowingly does not mean that the defendant needed to have positive knowledge. If the defendant failed to have positive knowledge only because he conscientiously avoided acquiring it, the requirement of knowledge is satisfied.
- United States v. Glick*, 710 F.2d 639, 642 (10th Cir. 1983).
140. *Tibbetts* and the Tenth Circuit case law are not inconsistent with *Mandatory Poster*’s holding that the “knowingly” requirement of certain deceptive trade practices under C.R.S. section 6-1-105 requires “actual knowledge.” See *Mandatory Poster*, 260 P.3d at 14. Here, the “willful ignorance” doctrine does not apply to whether misrepresentations were made knowingly. The State has established that element of proof, both as to Henry Aragon and Defendant Patterson. Patterson cannot credibly claim that he believed that Henry Aragon’s scripts were honest – *i.e.*, it was *true* that Henry Aragon’s companies were calling from the credit department of the publishers to make sure consumers were receiving their magazines, lower their monthly payments, send them a new listing, and place a privacy block on their account. Rather, Patterson’s claim is that he did not know that the orders he purchased from Aragon were procured by these deceptive tactics. This claim is not supported by the evidence.

141. Under *Tibbets* and the Tenth Circuit case law, Patterson’s deliberate efforts to avoid knowledge of Henry Aragon’s fraudulent sales practices cannot allow him to escape liability while retaining the profits from the fraudulent conduct. See *May Dep’t Stores*, 863 P.2d at 972 (“The court should make certain that the [CCPA] is construed in such a way as to avoid absurd or unintended results.”).

ii. Defendant Patterson is Liable for the WWRS “Renewal” Orders

142. Defendant Patterson authorized, cooperated in, and, at the very least, knew of and sanctioned the fraudulent conduct by his employee, David Hampton. See *Hoang*, 80 P.3d at 868; *Dolin v. Contemporary Fin. Solutions, Inc.*, 622 F. Supp. 2d 1077, 1088 (D. Colo. 2009) (“[T]he CCPA does provide for vicarious liability.”).

143. Neither Patterson nor Hampton was credible in claiming that Hampton was “off script” when he made his sales. First, Patterson’s testimony is simply not credible in light of his previous denial that WWRS did *any* new sales, and his unsuccessful attempt at trial to explain away his dissimulation. For his part, Hampton’s deposition testimony was uncertain and inconsistent.

144. Further, the recordings of Hampton’s calls showed that he was utilizing a truncated version of the same basic script used in the telemarketing operations of Henry Aragon; Patterson’s other cousins, Lucille Aragon and Dorothy Gonzales; Patterson’s Aunt, Lucille Makatura; Patterson’s uncle by marriage, Robert Makatura; Patterson’s mother, Yvonne Patterson; and Patterson’s father, Dale Leonard, the man who originally taught the three-step process and the scripts to Henry Aragon.

145. As with the Henry Aragon orders, if Patterson’s claimed lack of knowledge is to be believed, it is clear that he took conscious and deliberate steps to avoid such knowledge. Even though Patterson provided Hampton a script that he knew Hampton could not follow word for word, and he was well aware of Hampton’s history, Patterson did not identify for the Court any steps he took to supervise Hampton during the seven months that Hampton worked for WWRS. And Patterson made the conscious, deliberate decision not to review WWRS’s recordings of Hampton’s fraud (the portions of the recordings prior to the “verification”).

II. REMEDIES FOR VIOLATIONS OF THE CCPA

146. Once a violation of the CCPA has been established,

[t]he 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.

C.R.S. § 6-1-101(1) (emphasis added). The remedial authority set forth in section 6-1-110(1) “must be read in light of the broad legislative purpose to provide prompt, economical, and readily available remedies against consumer fraud.” *Western Food Plan, Inc. v. Dist. Court*, 598 P.2d 1038, 1041 (Colo. 1979). The Court has “considerable discretion in entering orders and judgment” to completely compensate injured consumers under C.R.S. § 6-1-101(1). *In re Jensen*, 395 B.R. 472, 485 (Bankr. Colo. 2008); *see also Showpiece Homes Corp. v. Assur. Co. of Am.*, 38 P.3d 47, 51 (Colo. 2001) (“[A]n expansive approach is taken in interpreting the CCPA in its entirety and interpreting the meaning of any one section by considering the overall legislative purpose.”).

A. Restitution

147. The Court concludes that the Patterson Defendants are liable for restitution for the orders originated by Henry Aragon’s companies and for the orders originated by WWRS employee David Hampton.
148. The State presented evidence that 2,351 consumers were injured through WWRS’s collection on “contracts” originated by Henry Aragon’s companies. *See* Pl. Ex. 351.
149. Consistent with the CCPA’s purpose to “provide prompt, economical, and readily available remedies against consumer fraud,” *Western Food Plan*, 598 P.2d at 1041, it is well established that restitution may be awarded for all affected consumers, not just those consumers who testified at trial.⁸ Here, the State presented evidence that every affected consumer was contacted over the telephone and received the same, scripted sales and capping pitches. The State also provided consumer testimony and audio recordings that demonstrated how the scripts led consumers to believe that they were speaking with their current magazine provider and deceived consumers into confirming and providing credit card and bank account information.⁹

⁸ *FTC v. Freecom Comm., Inc.*, 401 F.3d 1192, 1206 (10th Cir. 2005); *Kuykendall*, 371 F.3d at 765; *McGregor v. Chierico*, 206 F.3d 1378, 1388 (11th Cir. 2000); *FTC v. Febre*, 128 F.3d 530, 536 (7th Cir. 1997); *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 605 (9th Cir. 1993), *cert. denied*, 510 U.S. 1110 (1994); *FTC v. Security Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *People, ex rel. Lockyer v. Fremont Ins. Co.*, 128 Cal. Rptr. 2d 463, 482 (Cal. App. 2003); *State ex rel. Kidwell v. Master Distributions*, 101 Idaho 447, 456 (Idaho 1980); *see also Hall*, 969 P.2d at 232-33 (“[I]t is helpful . . . to examine other states’ interpretation of their consumer protection statutes.”).

⁹ A Maryland Supreme Court case with similar facts, *Consumer Protection Div. Office of Attorney Gen. v. Consumer Pub. Co.*, 501 A.2d 48 (Md. 1985), is instructive. In *Consumer Pub. Co.*, as in the present case, all sales

150. “[U]sing the defendant's gross receipts is a proper baseline in calculating the amount of sanctions necessary to compensate injured consumers.” *FTC v. Kuykendall*, 371 F.3d 745, 766 (10th Cir. 2004) (en banc); *see also FTC v. Freecom Commc’n., Inc.*, 401 F.3d 1192, 1206 (10th Cir. 2005) (same). The State presented evidence that consumers whose orders were originated by Henry Aragon’s companies have paid WWRS \$900,752.15. *See* Pl. Ex. 351.
151. The State seeks restitution in the amount of \$900,752.15 for the Henry Aragon orders. The Court concludes that the amount of restitution sought by the State is reasonable. In order to completely compensate and restore consumers to their original position, the Court concludes that WWRS’s gross collections receipts provide the amount to be awarded. In contrast to a case where a consumer willingly purchases a product, but was misled as to certain details of the transaction, the present case involves a scripted process in which consumers were deceived into a “contract” for magazines that the consumer had no intention of entering into. In this circumstance, it is proper to completely unwind all of the transactions at issue.
152. The Court orders Defendant Patterson and WWRS, jointly and severally, to pay **\$900,752.15** in restitution to compensate the 2,351 injured consumers in connection with WWRS’s collections on orders originated by Henry Aragon’s companies.
153. The Court also concludes that an award of restitution is proper as to the “renewal” orders originated by WWRS employee David Hampton. The State presented evidence that 195 consumers were injured through “renewal” orders originated by WWRS and that WWRS has collected \$107,258.82 on these orders. *See* Def. Ex. 355.
154. The evidence established that WWRS used a truncated version of the same scripts, containing the same key misrepresentations, as those used by Henry Aragon’s companies. Audio recordings of Hampton’s sales calls along with WWRS’s records show that Hampton successfully employed the script to deceive consumers into believing that he was calling to lower their prices and place a privacy block on their account. The recordings and WWRS’s business records show that the consumers were signed up for “contracts” that they had no intention of entering into.
155. The State seeks restitution in the amount of \$107,258.82 for the WWRS orders. For the reasons discussed above, the Court concludes that this amount is reasonable. The

were made via the same mechanism and there was no evidence that “consumers purchased [the products at issue] in any other way than from the advertisements in evidence.” *Id.* at 74. Noting that “there is no direct evidence that any consumers actually relied on the Company's deceptive or misleading advertisements,” the Court concluded that “we do not believe that such evidence is necessary.” Here, the State has provided evidence of consumer reliance.

Court orders Defendant Patterson and WWRS, jointly and severally, to pay **\$107,258.82** in restitution to compensate the 195 consumers injured by WWRS's deceptive procurement of "renewal" orders.

B. Unjust Enrichment

156. To prevent the Patterson Defendants from being unjustly enriched by the employment of deceptive trade practices, the Court concludes that it is proper to disgorge them of their unlawful gains. As in other consumer fraud cases, this Court may use its equitable discretion to determine a disgorgement figure. *See, e.g., FTC v. QT, Inc.*, 472 F. Supp. 2d 990, 995 n.2 (N.D. Ill. 2007).

157. The amount of Defendants' gross receipts is a proper starting point for calculating the amount of disgorgement. *FTC v. Freecom Commc'ns*, 401 F.3d 1192, 1206 (10th Cir. 2005) (citing *FTC v. Kuykendall*, 371 F.3d 745, 764 (10th Cir. 2004)). In calculating disgorgement, it is appropriate to require the government to "show that its calculations reasonably approximated' the amount of the defendant's unjust gains, after which 'the burden shifts to the defendants to show that those figures were inaccurate.'" *FTC v. Verity Int'l, Ltd.*, 443 F.3d 48, 67 (2d Cir. 2006) (quoting *FTC v. Febre*, 128 F.3d 530, 535 (7th Cir. 1997)).

158. The Court concludes that the Patterson Defendants should be disgorged of all moneys they collected from consumers in connection with the "contracts" they purchased Henry Aragon's companies, minus the amount they paid for the "contracts." This amount is \$129,153.04 (total amount collected by WWRS, \$900,752.15, minus total amount paid to Henry Aragon's companies, \$771,599.11). Therefore, the Court orders Defendant Patterson and WWRS, jointly and severally, to pay an unjust enrichment award of **\$129,153.04** for the Henry Aragon orders.¹⁰

159. The Court concludes that WWRS should be disgorged of all moneys it collected from consumers in connection with the orders originated by WWRS employee David Hampton. Therefore, the Court orders Defendant Patterson and WWRS, jointly and severally, to pay an unjust enrichment award of **\$107,258.82** in connection with the WWRS orders.¹¹

C. Civil Penalties

¹⁰ Because this award accounts for the same moneys that formed the basis for the Court's restitution award, it shall not be in addition to the Court's restitution award.

¹¹ Because this award accounts for the same moneys that formed the basis for the Court's restitution award, it shall not be in addition to the Court's restitution award.

160. Section 6-1-112(1) of the CCPA governs the imposition of civil penalties in this action:

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 paragraph (a), 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.

C.R.S. § 6-1-112(1).

161. Civil penalties are mandatory upon a finding that a defendant has violated or caused another to violate the CCPA. *May Dep't Stores*, 863 P.2d at 972. Further, “[i]n order to effectuate the broad remedial relief and deterrence purposes, the CCPA does not require proof of actual injury” for an award of penalties. *Id.* at 973.

162. Because of the “strong and sweeping remedial purposes of the CCPA,” the Colorado Supreme Court has ruled that “in determining whether conduct falls within the purview of the CCPA, it should ordinarily be assumed that the CCPA applies to the conduct.” *Showpiece Homes*, 38 P.3d at 53.

163. The Court concludes that Defendant Patterson was a knowing and willful participant in Henry Aragon’s deception, or at least sanctioned and profited from the deception, and as such “caused another to violate” the CCPA. Patterson’s participation began with the cash infusions that WWRS provided upon purchasing the Henry Aragon orders. His participation continued with the “verification” script he provided to all his dealers, which he knew was not a “verification” of a valid contract, but the final ruse in the three-step process. And Patterson’s participation continued with the aggressive collection on what he insisted to consumers were binding contracts. These collection efforts included sending consumers to collection agencies, even when it was clear that the consumer contested the validity of the contract and even when WWRS had not ordered any magazines for the consumer.

164. The Court concludes that the CCPA authorizes penalties against Defendant Patterson for his participation in the fraud. To rule otherwise would provide a roadmap for profiting from violations of the CCPA. Contracts in which consumers make recurring monthly payments are commonplace in modern American life. Unscrupulous individuals could simply purchase the right to collect on accounts procured by deceptive trade practices, take all necessary steps to appear to be ignorant of the fraud, and collect without fear of penalty. Such a result would be contrary to the purposes of the CCPA. *See May Dep't Stores*, 863 P.2d at 972 (“[The CCPA] must not be construed in such a manner that would render a civil penalties provision ineffective in accomplishing the purpose for which it was enacted.”).

165. Defendant Patterson is also liable for penalties for the deceptive trade practices by his employee, David Hampton. As noted above, the CCPA allows for vicarious liability. *Dolin*, 622 F. Supp. 2d at 1088. Patterson, as sole owner of WWRS, controls WWRS's business practices and is responsible for them. Further, the evidence suggests that Patterson profited from and sanctioned Hampton's deceptive conduct, either knowingly or by making a deliberate effort to remain unaware of it.
166. As Defendant Patterson and WWRS violated or caused another to violate the CCPA, this Court must impose civil penalties on them.
167. The Court may order civil penalties on both a "transaction involved" and a "consumer . . . involved" basis. *May Dep't Stores*, 863 P.2d at 973-74. The State has elected to seek civil penalties on both "transaction involved" and a "consumer involved" basis.
168. Any violation of the CCPA is a separate violation "with respect to each consumer . . . involved." C.R.S. § 6-1-112(1). A "consumer . . . involved" means a person who has been exposed to [the Defendants'] violations and either purchases merchandise subject to the misleading information or undertakes other activities in reliance on the advertisement." *May Dep't Stores*, 863 P.2d at 973-74. The term "transaction involved" means one advertisement per media outlet per day regardless of whether any consumer suffered actual injury or took any action in reliance on the advertisement. *May Dep't Stores*, 863 P.2d at 974-76.
169. The State has established that 2,351 consumers were signed up for a "contract" using Henry Aragon's scripts, and that multiple representations in the scripts violated the CCPA in five distinct ways (C.R.S. § 6-1-105(c), (b), (e), (l), (u)). Each violation carries a maximum penalty of \$2,000, with a statutory cap of \$500,000 for any related series of violations as to non-elderly consumers. The Court concludes that an award of \$2,000 for each of the five series of violations for each consumer is appropriate, up to the statutory cap of \$500,000. Therefore, the Court orders Defendant Patterson and WWRS, jointly and severally, to pay penalties in the amount of **\$2,500,000** for the Henry Aragon orders.
170. The State has established that WWRS employee David Hampton deceived 343 consumers using the truncated version of the Henry Aragon script. *See* Def. Ex. 355. The State has established that multiple statements in the script violated the CCPA in five distinct ways (C.R.S. § 6-1-105(c), (b), (e), (l), (u)). Each violation carries a maximum penalty of \$2,000, with a statutory cap of \$500,000 for any related series of violations as to non-elderly consumers. The Court concludes that an award of \$2,000 for each of the five series of violations for each transaction is appropriate, up to the statutory cap of \$500,000. Therefore, the Court orders Defendant Patterson and WWRS, jointly and severally, to pay penalties in the amount of **\$2,500,000** for the WWRS orders.
171. All payments under this Order shall be held in trust by the Colorado 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

D. Injunction

172. An injunction is an extraordinary and equitable remedy that is intended to prevent future harm. *May Dep't Stores*, 863 P.2d at 978. Here, as in other consumer protection cases, this Court has a duty to ensure that the injunctive relief will effectively redress and prevent future violations. *See id.* As set forth above, the Court concludes that the Patterson Defendants engaged in a pattern and practice of deceptive conduct, which has the capacity to continue if not permanently enjoined.
173. In fashioning an appropriate injunctive remedy, the Court notes that the Preliminary Injunction Order that issued on November 4, 2011, which proscribed certain specific deceptive trade practices and conduct that facilitated those practices, has not deterred the Patterson Defendants from continuing to profit from the enjoined practices.
174. As set forth above, the Preliminary Injunction Order required the Patterson Defendants to make their “best efforts” to ensure that they did not purchase orders from dealers who make false or misleading claims about being affiliated with publishers, who falsely tell consumers that they are a “preferred customer” who was contacted for some special reason other than as a possible magazine purchaser, or who represent or imply that they are extending an existing subscription rather than placing a new order or making a new sale for the same or a different magazine.
175. The Patterson Defendants failed to take the basic steps of reviewing the “sales” and “capping” portions of the audio recordings in their possession, or of requesting a copy of Angels, LLC’s scripts – both of which, the evidence showed, contained evidence that WWRS’s dealers were continuing to procure orders by pretending to be the consumers’ current magazine provider, including through the methods specifically enjoined by this Court.
176. Even after the Attorney General provided direct evidence to Defendant Patterson of his mother’s company’s continuing use of the scripts used by the Defendants in this case, the Patterson Defendants continued to buy orders from her and still have not asked to see her script.
177. Defendant Patterson claims that his dealers will not provide him a copy of their scripts because the scripts are protected trade secrets.
178. In order to prevent the Patterson Defendants from using or employing deceptive trade practices in the solicitation of magazines, this Court concludes that it is in the public interest to enjoin the Patterson Defendants and any other persons or entities acting under their control or in concert or participation with them 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 or implying that the solicitor is the current provider of the consumer's magazine(s), if such is not the case;
 - c. representing or implying that the solicited person was contacted for some reason other than as a possible magazine purchaser if such is not the case;
 - d. 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;
 - e. representing to the solicited person that the solicitor is putting a "privacy block" on the solicited person's credit, debit or bank account, or representing or implying that the solicitor needs to know the solicited person's credit card or bank account information for any reason other than to facilitate a purchase charge against the account; and
 - f. 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.
179. In order to prevent future consumer harm from deceptive trade practices, this Court concludes that it is in the public interest to enjoin the Patterson Defendants and any other persons or entities acting under their control or in concert or participation with them from purchasing magazine orders or contracts, or the right to collect on magazine orders or contracts, from any person or entity who engages in the conduct set forth in ¶ 181, above.
180. In order to prevent future consumer harm from deceptive trade practices, this Court concludes that it is in the public interest to affirmatively require the Patterson Defendants and any other persons or entities acting under their control or in concert or participation with them to:
- a. not less than one month prior to engaging in any magazine solicitations, send to the Attorney General a copy of any and all scripts to be used in such solicitations, along with an affirmation, signed under oath by a person with knowledge and authority, attesting that such scripts will be the only scripts used in such magazine solicitations;
 - b. not less than two weeks prior to making any changes to or replacements of the scripts described in ¶ 183(a), above, send to the Attorney General a copy of the new and/or modified scripts, along with an affirmation, signed under oath by a person with knowledge and authority, attesting that such scripts will be the only script used in such magazine solicitations;

- c. prior to purchasing any magazine orders or contracts or the right to collect on magazine orders or contracts from any third party, take all steps necessary to ensure that such third party sends to the Attorney General an affirmation, signed under oath by a person with knowledge and authority, attesting that such scripts will be the only scripts used in such third party's magazine solicitations and that such third party will send the Attorney General any and all new and/or modified scripts to the Attorney General no less than two weeks prior to the use of any such new and/or modified scripts.

181. In order to prevent future consumer harm from a continuation of the deceptive trade practices described in this Order, this Court concludes that it is in the public interest to enjoin Defendants and any other persons or entities acting under their control or in concert or participation with them from continuing to collect on any orders that were originated by WWRS or one of Henry Aragon's companies and affirmatively requires them to withdraw from collections any such accounts they have previously sent to a third-party collections agency. The Court further requires the Patterson Defendants to provide a status report and certification to the Court within 7 days of the date of this Order that Defendants have complied with this ¶ 184.

182. In order to prevent Defendants from using or employing deceptive trade practices, this Court concludes that it is the public interest to require all Defendants to comply with the CCPA, as now constituted or as may hereafter be amended in conducting business in the state of Colorado.

E. Attorneys Fees

186. Section 6-1-113(4), C.R.S. (2011) provides that attorney fees and costs are mandatory when the Colorado Attorney General successfully enforces the CCPA: "Costs and attorney fees *shall* be awarded to the attorney general . . . in all actions where the attorney general . . . successfully enforces this article." (Emphasis added.) As indicated by the awards of injunctive relief, civil penalties, restitution, and disgorgement of unjust enrichment, the Colorado Attorney General has successfully enforced the CCPA and is entitled to all reasonable attorney fees and costs.

187. The Colorado Attorney General, on behalf of the State, shall provide an affidavit of attorney fees and costs. This Court concludes that recovery of fees for governmental prosecution should be calculated at market rate. *Balkind v. Telluride Mountain Title Co.*, 8 P.3d 581, 588 (Colo. App. 2000).

188. Plaintiff's application for attorney fees and costs is due within fourteen days. Defendants will have fourteen days after that submission to file any objection.

Done this the February 25, 2013

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ashley S. [unclear]", written in a cursive style. The signature is positioned above a solid horizontal line.

District Court Judge

cc: All parties via efile