DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: July 29, 2013 1:54 PM
Plaintiff(s) STATE OF COLORADO et al. v. **Defendant(s)** RAYMOND B JONES, JR et al.	⚠ **COURT USE ONLY** ⚠
	Case Number: 2013CV31972 Division: 275 Courtroom:

ORDER ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

The motion/proposed order attached hereto: APPROVED.

The attached Proposed Order is hereby made an Order of the Court.

Issue Date: 7/29/2013

RONALD M MULLINS
District Court Judge

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	
STATE OF COLORADO, *ex rel.* JOHN W. SUTHERS, ATTORNEY GENERAL Plaintiff, v. RAYMOND B. JONES, JR.; CORA JONES; PUBLICATIONS @ MILE HIGH; PUBLICATIONS @ MILE HIGH 2; SUBSCRIPTION SOLUATIONS; C & R MARKETING AND ASSOCIATES, LLC; C & R MARKETING & ASSOCIATES; 5280 PUBLICATIONS, LLC; MAGAZINE MAN Defendants.	
	Case No.: 2013CV031972 Div.: 275

(PROPOSED) ORDER ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS RAYMOND B. JONES, JR; PUBLICATIONS @ MILE HIGH; PUBLICATIONS @ MILE HIGH 2; SUBSCRIPTION SOLUATIONS; C & R MARKETING AND ASSOCIATES, LLC; C & R MARKETING & ASSOCIATES; 5280 PUBLICATIONS, LLC; AND MAGAZINE MAN

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The Court, having reviewed the record in this matter, including *Plaintiff's Motion for Default Judgment Against Defendants Raymond B. Jones, Jr.; Publications @ Mile High; Publications @ Mile High 2; Subscription Soluations; C & R Marketing and Associates, LLC; C & R Marketing & Associates; 5280 Publications, LLC; and Magazine Man* ("*Motion for Default Judgment*") and the supporting affidavits, and being fully advised in the premises:

FINDS and CONCLUDES that default judgment should be entered for Plaintiff in the above-captioned matter against Defendant Raymond B. Jones, Jr. and against Defendants Publications @ Mile High; Publications @ Mile High 2;

Subscription Soluations; C & R Marketing and Associates, LLC; C & R Marketing & Associates; 5280 Publications, LLC; and Magazine Man (hereinafter "Corporate Defendants").

1. This Court has subject matter jurisdiction in this action by virtue of C.R.S. § 6-1-110(1) (2013). The Court has personal jurisdiction over Defendant Raymond B. Jones, Jr. and the Corporate Defendants, who were properly served with process on May 1, 2013.

2. Some of Defendants' consumer victims resided in the City and County of Denver during the relevant timeframe. Therefore, venue has been considered and is proper in the County of Denver, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2013).

3. Pursuant to Rule 121 § 1-14, neither Defendant Raymond B. Jones, Jr. nor the Corporate Defendants are minors, incapacitated persons, officers or agencies of the state, or in the military.

4. Neither Defendant Raymond B. Jones, Jr. nor the Corporate Defendants have answered Plaintiff's Complaint within the timeframe set by the Rules of Civil Procedure, and the Clerk entered their default on June 3, 2013.

5. Plaintiff is in compliance with C.R.C.P. Rule 55, having provided notice of its motion for default judgment to Defendant Raymond B. Jones and the Corporate Defendants on the date of filing.

6. The Court has entered a Consent Judgment as to Defendant Cora Jones. Thus, this Order resolves the present action as to all Defendants and claims.

PERMANENT INJUNCTION

7. Under C.R.S. § 6-1-110(1), this Court has express authority to issue an injunction to enjoin ongoing violations of the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* ("CCPA"):

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

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> 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. § 6-1-110(1).

8. Plaintiff has shown to this Court probable cause that Defendants, through a scripted process, deceived consumers into fraudulent "contracts" for magazine subscriptions, valued at up to $1,300. Defendants did so through a variety of deceptive and illegal acts, including multiple misrepresentations designed to convince the consumer that Defendants were the consumers' current magazine provider, calling to verify the details of a previous order and update the consumers' file. Defendants then deceived consumers into participating in a recorded "verification," which Defendants later falsely claimed was a binding oral contract, and collected money from consumers.

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

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

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

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12. Therefore, this Court ORDERS that Defendants Raymond B. Jones, Jr. and the Corporate Defendants, and any other person under their control or at their direction, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who receives actual notice of the Order, are PERMANENTLY ENJOINED from engaging in, directing, assisting with, or participating in magazine solicitations, including over the telephone.

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

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

14. This Court finds that Plaintiff's *Motion for Default Judgment* and accompanying affidavit of Investigator LeAnn Lopez adequately establish the amount of restitution and unjust enrichment for which judgment should be entered. The Court finds that Defendant Raymond B. Jones, Jr. and the Corporate Defendants are jointly and severally liable for restitution and/or unjust enrichment in the amount of **$1,682,772.41**.

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

> 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)(a).

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

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17. Based on Plaintiff's *Motion for Default Judgment* and the accompanying affidavit of Investigator LeAnn Lopez, the Court finds that 4,924 consumers were deceived by Defendant Raymond B. Jones' and the Corporate Defendants' scripted deceptive trade practices. These Defendants violated the CCPA in at least four ways – C.R.S §§ 6-1-105(c), (b), (e), and (u) – as to each of these 4,924 consumers. Based on the record, the Court finds that Defendants' violations of the CCPA were deliberate, knowing, done in bad faith, and repeated in nature, requiring consumers to pay hundreds of dollars or more for magazines the consumers never intended to order. Therefore, the Court concludes that the maximum penalty of $2,000 is appropriate as to each violation of the CCPA for each consumer. Because the maximum penalty for each of Defendants' violations of the CCPA (*i.e.*, 4,924 x 2000) would exceed the statutory cap of $500,000 for any related series of violations, the Court concludes that a penalty of $500,000 for each of the four series of related violations is appropriate. Therefore, the Court finds that an award of civil penalties in the amount of $500,000 is appropriate for the violations of C.R.S §§ 6-1-105(c), (b), (e), and (u), for a total penalty of **$2,000,000**.

18. The Attorney General is entitled to costs and attorney fees pursuant to C.R.S. § 6-1-113(4). Based on the affidavits of attorneys Mark T. Bailey and Sarah Jackson, the Court finds that an award of fees in the amount of **$80,737.00** and costs in the amount of **$955.86** is appropriate.

19. This Court therefore ENTERS final judgment in favor of Plaintiff and against Defendants Raymond B. Jones, Jr.; Publications @ Mile High; Publications @ Mile High 2; Subscription Soluations; C & R Marketing and Associates, LLC; C & R Marketing & Associates; 5280 Publications, LLC; and Magazine Man, jointly and severally, in the amount of **$3,764,465.27**, as itemized below:

Restitution/Unjust Enrichment:	$1,682,772.41
Penalties:	$2,000,000.00
Fees	$80,737.00
Costs:	$955.86
Total:	**$3,764,465.27**

Dated this ____ day of _____, 2013.

BY THE COURT:

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The Honorable Ronald M. Mullins
District Court Judge

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