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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

NO. 19-2-24757-6 SEA

Plaintiff,

~~[PROPOSED]~~ ORDER GRANTING
STATE'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
PENALTIES AS TO DEFENDANTS'
TELEPHONE SOLICITATION AND
PRINT MARKETING PRACTICES

v.

US AIR DUCTS & SKY BUILDERS, INC.
dba US AIR DUCTS & BUILDERS, a
Washington State Corporation; RAMI
MORNEL, individually and on behalf of his
marital community; DLM SERVICES, INC.,
a Washington State Corporation; US AIR
DUCTS & HVAC LLC, a Washington
limited liability company; DAVID MOSHE,
individually; and SUSANNA MORNEL,
individually and on behalf of her marital
community,

Defendants.

THIS MATTER, having come before the Court on State of Washington's (State's)
Motion for Partial Summary Judgment on Penalties as to Defendants' Telephone Solicitation
and Print Marketing Practices, and ~~the Court having heard the arguments, if any, of the parties,~~
and being familiar with the following material:

no response by

*in writing
(there are no notice
of appearance by*

[Signature]

~~[PROPOSED]~~ ORDER GRANTING
STATE'S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON PENALTIES
AS TO DEFENDANTS' TELEPHONE
SOLICITATION AND PRINT
MARKETING PRACTICES - 1

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
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*any pro se party
in individual)*

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1. State’s Motion for Partial Summary Judgment on Penalties as to Defendants’ Telephone Solicitation and Print Marketing Practices;
2. Declaration of Kate Barach;
3. Supplemental Declaration of Eric M. Peters;
4. Defendant’s Opposition and supporting declarations, if any;
5. State of Washington’s Reply and supporting declarations, if any;
6. Any other papers or pleadings on file related to the State’s Motion for Partial Summary Judgment on Penalties as to Defendants’ Telephone Solicitation and Print Marketing Practices; and
7. _____.

The Court hereby enters the following FINDINGS and CONCLUSIONS:

1. Defendants Rami Mornel, US Air Ducts & Sky Builders, Inc. (US Air Ducts), and DLM Services, Inc. (DLM) (collectively, Defendants), reside or are located in the State of Washington.
2. Summary judgment “is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d 695 (2009); CR 56(c).
3. Pursuant to RCW 19.86.140 “[e]very person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation.” Assessment of penalties for each violation of the Washington Consumer Protection Act (CPA) is mandatory. *State v. Living Essentials, LLC*, 8 Wn. App. 2d 1, 36, 436 P.3d 857 (2019), *review denied*, 193 Wn.2d 1040 (2019). “Each deceptive act is a separate violation.” *State v. LA Investors, LLC*, 2 Wn. App. 2d 524, 545, 410 P.3d 1183 (2018), *review denied*, 190 Wn.2d 1023 (2018). Determination of the amount of penalty per-violation to assess under

1 RCW 19.86.140 (within the statutory limit of \$2,000) is discretionary.
2 *Living Essentials*, 8 Wn. App. 2d at 36.

3 4. Corporate Defendants committed at least 11,100,213 CPA violations by making
4 11,100,213 separate robocalls to Washington consumers between
5 September 21, 2017, and September 13, 2019.

6 5. Corporate Defendants committed at least 17,830,724 CPA violations by
7 circulating 17,830,724 deceptive print advertisements to Washington consumers'
8 homes between September 21, 2017, and June 16, 2019.

9 6. Defendant Rami Mornel is individually liable for the CPA violations of the
10 Corporate Defendants set forth above, pursuant to the Court's prior orders
11 granting the State's summary judgment motions on liability. Dkts. 125, 126.

12 7. The Court has discretion concerning the amount of the penalty to award per
13 violation under RCW 19.86.140, and the factors to consider when fixing that
14 amount. *Living Essentials*, 8 Wn. App. 2d at 36. Relevant factors may include,
15 but are not limited to, the amount of revenue defendants generated in Washington;
16 whether defendants acted in good faith; injury to the public; defendants' ability
17 to pay; desire to eliminate any benefits derived by the defendants from the
18 violation at issue; and, the necessity of vindicating the authority of the Attorney
19 General to enforce the CPA. *Id.*; *LA Investors*, 2 Wn. App. 2d at 546 (citing
20 *United States v. Reader's Digest Association, Inc.*, 662 F.2d 955, 967 (3rd Cir.
21 1981)). The Court finds that Defendants' conduct supports a per-violation penalty
22 of \$5 per robocall and a \$1 per print advertisement. The State, however, requests
23 that the Court enter total penalties of only \$5,000,000 for the 28,930,937
24 violations of the CPA, in light of the Defendants' ability to pay.

25 8. Liability for civil penalties under the CPA is assessed individually against each
26

1 Defendant. *State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.*, 87 Wn.2d
2 298, 322, 553 P.2d 423 (1976). Accordingly, “[i]f a corporate officer participates
3 in the wrongful conduct, or with knowledge approves of the conduct, then the
4 officer, as well as the corporation, is liable for the penalties.” *Id.*

5 Having made the foregoing findings and conclusions, the Court ORDERS the following:

- 6 1. The State’s Motion for Partial Summary Judgment on Penalties as to Defendants’
7 Telephone Solicitation and Print and Online Marketing Practices is GRANTED.
8 2. A judgment in the amount of \$5,000,000 is entered in favor of Plaintiff against
9 Corporate Defendants.
10 3. A judgment in the amount of \$5,000,000 is entered in favor of Plaintiff against
11 Defendant Rami Mornel.
12 4. Pursuant to 19.86.080(1), the Court finds that the State is entitled to an award of
13 attorneys’ fees and costs in pursuing these claims.

14 DATED this 26 day of August, 2020.

15
16 THE HONORABLE ~~SUSAN CRAIGHEAD~~

JAMES E. ROGERS

17 Presented by:
18 ROBERT W. FERGUSON
19 Attorney General

20 s/Mina Shahin

21 MINA SHAHIN, WSBA #46661
22 KATHARINE BARACH, WSBA #51766
23 DANIEL ALLEN, WSBA #45036
24 Assistant Attorneys General
25 Attorneys for Plaintiff State of Washington
26

[PROPOSED] ORDER GRANTING
STATE’S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON PENALTIES
AS TO DEFENDANTS’ TELEPHONE
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