

1
2
3
4
5
6
7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 THE MANDATORY POSTER
13 AGENCY, INC., d/b/a CORPORATE
14 RECORDS SERVICE, THE
15 WASHINGTON LABOR LAW
16 POSTER SERVICE, WASHINGTON
FOOD SERVICE COMPLIANCE
CENTER, and STEVEN J. FATA,
THOMAS FATA, AND JOSEPH FATA,
individually and in their corporate
capacity,

17 Defendants.

NO. 14-2-17437-3 SEA

ORDER ON AMOUNT OF CIVIL
PENALTY AND PROCEDURE FOR
RESTITUTION

18
19 This matter came before the Court on the State of Washington's Presentment of Order
20 Regarding Penalty Amount and Restitution Process, and a competing entry from Defendant
21 Mandatory Poster Agency, Inc., Steven Fata, Thomas Fata, and Joseph Fata (collectively, the
22 "Defendants"). The Court examined the papers, pleadings, and supporting document on file in
23 this case before entering the Order herein.

24 On January 26, 2016, the Court entered an Order Granting in Part Plaintiff State of
25 Washington's Motion for Summary Judgment and Denying Defendants' Motion for Summary
26 Judgment (the "January 26 Order"). The Court adopts and incorporates the January 26 Order

1 into this Order. In the January 26 Order, the Court reserved three issues for later ruling: (1) the
2 method for restitution, (2) the amount of civil penalty, and (3) the amount of attorneys' fees
3 and costs that would be awarded. This Order addresses the first two issues. Attorneys' fees
4 and costs will be addressed in a separate entry.

5 **I. CIVIL PENALTY**

6 1. The Court previously held that, pursuant to RCW 19.86.140, Defendants shall
7 jointly and severally pay a civil penalty for each of their 79,354 violations of the AOD and
8 CPA.

9 2. The Court orders Defendants to jointly and severally pay a civil penalty to the
10 State in the amount of \$793,540. This civil penalty amount is based on \$10 per violation for
11 79,354 violations.

12 3. In setting the civil penalty amount, the Court considered Defendants' lack of
13 good faith the most important element. This civil penalty will eliminate any benefits derived
14 by the Defendants from their deceptive practices, and also will vindicate the authority of the
15 Consumer Protection Act to protect Washington consumers from unfair and deceptive acts.
16 Defendants entered into an Assurance of Discontinuance with the State and then repeatedly
17 violated it. Defendants' conduct harmed those that bought their product due to Defendants'
18 deception. In addition to those small businesses that purchased Defendants' product due to
19 deception, others that did not purchase the product spent time and wasted effort reviewing the
20 deceptive solicitation. The civil penalty set herein is less than the maximum potential civil
21 penalty of \$2,000 per violation, which would total \$158,708,000. There is no mandatory "cap"
22 on the penalty in this situation. The amount is also less than the potential harm of \$9,919,250
23 that Defendants could have caused if all Washington consumers who had received Defendants'
24 deceptive mailer had purchased the \$125 product based on Defendants' deception.

II. RESTITUTION

1
2 4. In the January 26 Order, the Court found that, pursuant to RCW 19.86.080(2),
3 that Defendants must jointly and severally provide restitution to Washington consumers. The
4 Court orders that restitution shall be administered as follows.

5 5. Within 45 days of the Entry of this Order, Defendants must retain a nationally
6 recognized claims administrator to operate the claims process. Defendants are required to
7 receive approval from the State before retaining the claims administrator, which shall not be
8 unreasonably withheld. The parties shall then file a motion for approval of the claims
9 administrator with the Court.

10 6. Defendant is responsible for all costs and fees associated with retaining the
11 nationally recognized claims administrator. As the claims process is ongoing, none of the costs
12 of the claims administrator may be paid from the potential restitution funds or from the civil
13 penalty amount. Once the claims administration process is complete, amounts remaining in the
14 restitution fund will be allocated or disbursed per agreement of the parties or subsequent order
15 of the court.

16 7. Within 10 days of the Court's entry of approval of the claims administrator,
17 Defendants must transmit the full amount of potential restitution, \$362,625, to be held in trust
18 by the claims administrator (the "Restitution Fund"). The Defendants shall have no interest,
19 right, title, ownership, privilege or incident of ownership, or authority in regard to the
20 Restitution Fund and shall have no right to alter, amend, revoke or terminate the Restitution
21 Fund. The claims administrator is not authorized to pay or distribute any money from the
22 Restitution Fund unless specifically authorized by this Order or a later order of the Court.

23 8. Within 10 days of the Court's entry of approval of the claims administrator,
24 Defendants must provide the claims administrator and the State a verified list of all
25 Washington consumers that purchased Defendants' product along with a list of those that have
26 received a refund and the amount of the refund. Washington consumers will be eligible to

1 receive restitution in the amount of the difference between the amount they paid and any
2 refund they received from Defendants.

3 9. The claims administrator shall accept and process all claims of Washington
4 consumers, taking appropriate measures (as determined in the claim administrator's discretion)
5 to minimize fraud and promote accuracy. The claims administrator shall provide confirmation
6 of a claim submission, and if applicable, a check in the amount of the restitution pursuant to the
7 process set forth herein.

8 10. For the entire period of the claims process, the claims administrator shall
9 maintain a website with the terms and conditions of this Order and the process by which a
10 consumer may file a claim for restitution to be paid using monies from the Restitution Fund.
11 The website shall enable, with appropriate measures to minimize fraud and promote accuracy,
12 consumers to file a claim for restitution with the claims administrator. The website must be in
13 both English and Spanish.

14 11. For the entire period of the claims process, the claims administrator will offer a
15 1-800 number whereby consumers can call to receive more information regarding the
16 restitution mechanism. The 1-800 number must have operators available to assist consumers in
17 English and Spanish during business hours.

18 12. The claims administrator shall verify all addresses on Defendants' customer list
19 that will be used for restitution through a nationally recognized third-party vendor. This must
20 be completed within 40 days of the Court's entry of approval of the claims administrator, but
21 this deadline may be extended for good cause.

22 13. The Court directs the claims administrator to send two mailings to the Washington
23 consumers that are eligible for restitution. The first mailing will be a postcard notifying
24 consumers of the restitution mechanism at the direction of King County Superior Court. It will
25 tell the consumer that there is a website where they can enter their opt-in and that a second
26 mailing with a claims form will be arriving shortly. The first mailing must list a 1-800

1 telephone number that consumers may call with questions about the restitution process. This
2 first mailing must be sent within 70 days of the Court's entry of approval of the claims
3 administrator, but this deadline may be extended for good cause.

4 14. The second mailing will contain the opt-in or opt-out information as listed
5 below. The second mailing will contain a self-addressed stamped envelope addressed to the
6 claims administrator. The second mailing must be mailed within 7 days of the mailing of the
7 first mailing referenced above. This second mailing must contain a claims form that is
8 substantially similar to Exhibit 1 although this form may be changed by agreement of the
9 parties or for good cause.

10 15. Consumers will have 75 days from the mailing date of the second mailing to file
11 a claim. The claim application for restitution shall be deemed timely if it is received by the
12 claims administrator with a postmark date and/or is received by the claims administrator no
13 more than 75 days after the date of the mailing of the claims form, which is referred to as the
14 second mailing.

15 16. In the event that there are any mailings that are returned as undeliverable due to
16 an incorrect address or for any other reason, the claims administrator within 60 days of such
17 return shall make all reasonable efforts to locate and contact the consumer, which must include
18 a search of commercial databases as well as the State of Washington's Business Licensing
19 Service and the Secretary of State for current addresses and/or contact information for the
20 business, its principal, and its registered agent. The claims administrator will mail the first and
21 second mailing to any newly discovered addresses or contact information, and the consumer
22 will have 75 days from the second mailing date to file a claim.

23 17. A claims form shall be deemed valid if the consumer checks the box in full or in
24 part indicating "if you purchased the "annual minutes" product from Defendants because you
25 believed the solicitation originated from the government or you believed you were under a
26 legal obligation to purchase Defendants' product. You are entitled to restitution." or otherwise

1 indicates that they are eligible for restitution. If a claims form is returned to the claims
2 administrator with neither box checked, the claims administrator must request additional
3 information from the consumer within 30 days by mail, email (if available), and telephone (if
4 available). The consumer will then have an additional 30 days from the date of the
5 aforementioned mailing by the claims administrator to provide this additional information. A
6 claims form is deemed timely if it is received or post-marked in the longer of (a) the 30-day
7 period referenced in the foregoing sentence or (b) the time period specified in Paragraph 15.

8 18. The claims administrator shall pay all restitution claims deemed to be valid
9 within 30 days of receipt of a valid claim.

10 19. All disbursements distributed by the claims administrator shall be made by
11 check that is valid for 90 days from issuance. The claims administrator shall advise, by mail
12 and email (if available), each consumer to whom such checks were issued if such check has
13 remained un-cashed for more than 60 days. The consumer may, if they contact the claims
14 administrator within 45 days thereafter, have a restitution check reissued, which will be valid
15 for 45 days.

16 20. The claims administrator shall provide to the Defendants and the State a
17 monthly report that provides the following information: (a) number of claims received; (b)
18 number of claims paid; (c) identities of consumers who made a claim; (d) identities of
19 consumers who were paid a claim; (e) amount of monies paid into and remaining in the
20 Restitution Fund; (f) total amount of claims paid; (f) number of deficient claims received; (g)
21 number of deficient claimants notified of their deficiency; (h) number of cured deficiencies; (i)
22 number of ineligible claims made; (j) the identities of consumers whose claims were deemed
23 deficient or ineligible; and (k) for each claim deemed deficient or ineligible, the basis for this
24 decision. The claims administrator shall provide, upon request by the State, all documentation
25 and information necessary for the State to confirm compliance with this Order.
26

1 21. All layout, language on the outside of the mailing and the inside of the mailing,
2 as well as the website, will be executed by the claims administrator subject to the sole approval
3 by the State prior to submission to the consumer.

4 22. The Court provides the following guidance for the content and layout of the
5 outside and inside of the mailing.

6 **Outside of Mailing**

7 23. Design the notice to make it distinguishable from “junk mail.”

8 24. A reference to the court’s name (at the administrator’s address) and the Attorney
9 General must be included to ensure that the consumer recognizes the notice’s legitimacy.

10 25. “Call-outs” on the front and back must be included to encourage the recipient to
11 open and read the notice when it arrives with other mail.

12 26. The call-out on the front must identify what the notice is about and who is
13 affected. On the back, the call-out must highlight the restitution opportunity.

14 27. The claims administrator is directed to use these techniques even if the mailed
15 notice is designed as a self-mailer, i.e., a fold-over with no envelope.

16 28. Identify the Office of the Attorney General as the sender and that this mailing is
17 at the direction of the King County Superior Court, State of Washington.

18 **Inside of Mailing**

19 29. The claims administrator shall notify consumers this is a court ordered process
20 and will include a reference to the court’s name (at the administrator’s address) and the
21 Attorney General to ensure that the consumer recognizes the notice’s legitimacy.

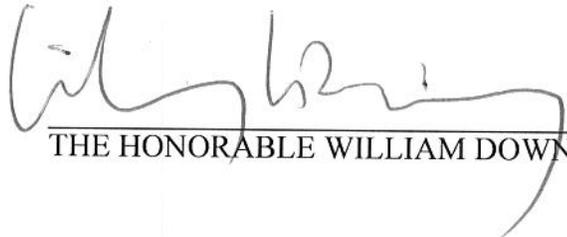
22 30. The claims administrator shall ask consumers to check one of two boxes. The
23 first box will state that consumers did not intend to purchase the “annual minutes” from
24 Defendants and only did so because of the unfair and deceptive nature of the mailers. As such,
25 consumers understand they are entitled to \$125 in restitution. The second box will state that the
26 consumer intended to purchase the “annual minutes” product from Defendants and understand

1 they are not entitled to restitution.

2 31. This second mailing must contain a claims form that is substantially similar to
3 Exhibit 1 although this form may be changed by agreement of the parties or for good cause.

4 32. A self-addressed stamped envelope addressed to the claims administrator will
5 be sent to every consumer in the second mailing.

6
7 DATED this 3rd day of March, 2016.

8
9
10 
11 THE HONORABLE WILLIAM DOWNING

12 Presented by:

13 ROBERT W. FERGUSON
14 Attorney General

Approved for Entry and as to Form,
Notice of Presentation Waived

FOSTER PEPPER PLLC

15
16 _____
17 MARC WORTHY, WSBA #29750
Assistant Attorney General
18 JEFFREY G. RUPERT, WSBA #45037
Assistant Attorney General
19 Attorneys for Plaintiff State of Washington

20 _____
21 MICHAEL K. VASKA, WSBA #15438
22 KATHRYN C. MCCOY, WSBA #38210
23 JACQUELINE C. QUARRÉ, WSBA #48092
24 Attorneys for Defendants
25
26

1 **EXHIBIT 1**

2 (sample form)

3 **KING COUNTY SUPERIOR COURT**

4 This is a Washington State Court Authorized Notice and is also authorized by Washington
5 Attorney General Robert Ferguson – This is not a solicitation from an Attorney

6 **State of Washington vs. The Mandatory Poster Agency, et al.**
7 **King County Superior Court 14-2-17437-3 SEA**

8 **CORPORATE RECORDS SERVICE CONSUMER RESTITUTION FUND**

9 To: [name and address of consumer]

10 **You may be eligible for a payment of \$125.** The Washington Attorney General filed a lawsuit
11 that may allow you to obtain \$125. The King County Superior Court has ordered the Defendants
12 in the above case to provide restitution to certain consumers that purchased a legal form from
13 Corporate Records Service (“CRS”). Records indicate that you purchased a legal form product
14 from CRS. If you wish to file a claim for restitution, please follow these instructions.

14 **Alternatively, you may complete a Claim form online at: _____.**

15 These rights and options – **and the deadlines to exercise them** - are explained in this notice.

16 The pages of this document contain a Claim Form for filing with the Administrator. If you
17 bought an “annual minutes product” legal form from CRS, you could get a refund.

- 18 • A refund of \$125 will be paid to you if you purchased an annual minutes product because
19 you believed it originated from the government or were under a legal obligation to
20 purchase the product.
- 21 • Your legal rights are not affected whether you act, or don’t act. Read this notice
22 carefully.
- 23 • To be considered for a refund, you must return this form or file a claim online within 75
24 days of the date of the mailing of this claims form.

23 Check this box if you purchased the “annual minutes” product from Defendants because
24 you believed the solicitation originated from the government or you believed you were
25 under a legal obligation to purchase Defendants product. **You are entitled to restitution.**

25 Check this box if you intended to purchase the “annual minutes” product from
26 Defendants. **You are not entitled to restitution.**