

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
Plaintiff,
v.
Arrow Outlet, LLC, a Delaware limited liability company doing business as www.arrowoutlet.com,
Defendant.

NO. 13-2-01723-7 SEA
CONSENT DECREE
[CLERK'S ACTION REQUIRED]

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor:** State of Washington
- 1.2 Judgment Debtor:** Arrow Outlet, LLC, a Delaware limited liability company
- 1.3 Principal Judgment Amount:**
 - a. Civil Penalty** \$ 15,000.00 (plus \$35,000 suspended)
 - b. Restitution** \$ 50,000
- 1.4 Costs & Attorney's Fees:** \$ 20,000
- 1.5 Total Judgment:** \$ 85,000
- 1.6 Post Judgment Interest Rate:** 12% per annum
- 1.7 Attorney for Judgment Creditor:** Jason E. Bernstein, AAG
- 1.8 Attorney for Judgment Debtor:** Michael D. McKay and Krysta A. Liveris, McKay Chadwell, PLLC

1 Plaintiff, State of Washington, having commenced this action pursuant to the Consumer
2 Protection Act, RCW 19.86, and Defendant, Arrow Outlet, LLC, a Delaware limited liability
3 company, having waived service with a Summons and Complaint in this matter; and

4 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney General,
5 and Jason E. Bernstein, Assistant Attorney General, and Defendant appearing by and through its
6 attorneys, Michael D. McKay and Krysta A. Liveris, McKay Chadwell, PLLC; and

7 Plaintiff and Defendant having agreed on a basis for the settlement of the matters
8 alleged in the Complaint, and to the entry of this Consent Decree against Defendant without the
9 need for trial or adjudication of any issue of law or fact; and

10 Plaintiff and Defendant acknowledge that each party has agreed to the entry of this
11 Consent Decree solely for the purposes of settlement. Nothing contained in this Consent
12 Decree shall constitute an admission or concession by Defendant or evidence supporting any of
13 the allegations of fact or law set forth in the Complaint, or of any violation of any state or
14 federal law, rule or regulation, or any other liability or wrongdoing whatsoever. Nothing in this
15 paragraph shall limit the Attorney General from relying on this Consent Decree for the purpose
16 of enforcing it against Defendant; and

17 Defendant recognizes and states that this Consent Decree is entered into voluntarily and
18 that no promises or threats have been made by the Attorney General's Office or any member,
19 officer, agent or representative thereof to induce it to enter into this Consent Decree, except as
20 provided herein; and

21 Defendant waives any right it may have to appeal from this Consent Decree; and

22 Defendant further agrees that it will not oppose the entry of this Consent Decree on the
23 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure,
24 and hereby waives any objections based thereon; and

1 Defendant further agrees that this Court shall retain jurisdiction of this action for the
2 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for
3 all other purposes; and

4 The Court finding no just reason for delay;

5 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
6 follows:

7 II. GENERAL

8 **2.1** Jurisdiction. This Court has jurisdiction over the subject matter of this action
9 and over the parties. The Plaintiff's Complaint in this matter states claims upon which relief
10 may be granted under the provisions of the Consumer Protection Act, RCW 19.86.

11 **2.2** Defendant. For purposes of this Consent Decree the term "Defendant" where not
12 otherwise specified shall mean Arrow Outlet, LLC, a Delaware limited liability company.

13 **2.3** Definitions. For purposes of this Consent Decree, the following terms are
14 defined as follows:

15 a. "Penny auction" or "penny auction website" is defined as an online
16 auction where participants purchase or receive "bids" that can be spent to
17 participate in the auctions for individual consumer goods. The bids may or may
18 not cost money and may or may not raise the price of the consumer goods in the
19 auction by an amount equal to or less than the cash value of the bid. Penny
20 auctions do not include online auction websites where consumers participate in
21 auctions free of charge and pay money only upon winning an auction.

22 b. "Washington Consumer" means a consumer who provided a Washington
23 State zip code during registration with Arrow Outlet, LLC or who otherwise is
24 self-identified as a resident of Washington State and purchased bids from Arrow
25 Outlet, LLC.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. INJUNCTIONS

3.1 Application of Injunctions. The injunctive provisions of this Consent Decree shall apply to the Defendant, and the Defendant’s successors, assigns, officers, agents, servants, employees, representatives and affiliates, in connection with the sale of products or services through a penny auction or penny auction website.

3.2 Notice. Within thirty days following the entry of this Consent Decree, Defendant shall inform all managers, former managers, and employees, including those employees with supervising responsibilities, of the terms and conditions of this Consent Decree.

3.3 Injunctions. Defendant and all successors, assigns, transferees, officers, agents, servants and employees are hereby permanently enjoined and restrained from directly or indirectly engaging in any of the following conduct, whether from a computer or Internet-enabled cellular telephone or other such device located in the state of Washington, or from a computer or Internet-enabled cellular telephone or other such device elsewhere where the conduct is directed to Washington State residents:

a. Creating, administering, running, purchasing, or in any way using a “penny auction” website to generate income.

b. Using any auto-bid script, bidbot, or other artificial computer program to simulate bidding activity in the context of a “penny auction” website where consumers purchase bids and must spend them to participate in the auction, whether the auctions are timed or untimed, and where the consumer spends money on bids even when the consumer does not win the auction.

c. Directly or indirectly engaging in any act, system, scheme, or plan that involves fraudulent or deceitful bidding made in bad faith or bidding in which the auctioneer and seller collude to increase the price of an item for sale in the context of any auction, be it online, in person, traditional, or a “penny auction.”

1 d. Violating the Consumer Protection Act, RCW 19.86, by making illegal
2 misrepresentations in the context of any advertising of products or services in online commerce.

3 e. Failing to file the necessary paperwork and pay the necessary fees to
4 maintain the company as an active limited liability company as required by applicable state law
5 in the state of incorporation for a period of four (4) years starting on December 1, 2012.

6 IV. RESTITUTION

7 4.1 Restitution

8 a) Within ten (10) days of entry of this Consent Decree, or as otherwise
9 agreed to by the AGO, Defendant shall pay to the AGO \$50,000 to create an Arrow Outlet
10 Restitution Fund (Restitution Fund or Fund). The Restitution Fund shall be distributed to
11 Washington Consumers as provided for in the following paragraphs. In the event that the
12 Restitution Fund is not depleted by consumer claims, the remainder of the Fund shall be
13 retained by the Attorney General as recovery of costs and fees.

14 b) Within sixty (60) days of entry of this Consent Decree, the AGO shall
15 begin accepting Washington Consumer claims for restitution. Washington Consumers may
16 obtain claim forms, which shall be designed by the Attorney General, from the AGO website
17 or by calling the AGO's general consumer contact number. In order to be eligible for
18 restitution, the claim must meet the following requirements: (1) the claim must concern the
19 purchase of bids from Arrow Outlet, LLC during its operational dates from August 1, 2010
20 through July 31, 2012; and (2) the claim must be submitted by a Washington Consumer for
21 money spent on the purchase of bid packs from Arrow Outlet, LLC and include as much
22 documentation as the consumer has retained.

23 c) The Attorney General retains the right to limit restitution per
24 Washington Consumer claim to a maximum amount of \$250 or less depending on quality of
25 claim substantiation.
26

1 d) The Claims Period shall run for 90 days from the date that the AGO
2 begins accepting Washington Consumer claims.

3 e) Within 60 days after the expiration of the Claims Period, the AGO shall
4 mail restitution to all eligible claimants subject to paragraph (c).

5 f) All remaining funds not claimed by Washington Consumers shall be
6 retained by the AGO as recovery of costs and fees in administering the claims process.

7 g) Payment under this provision shall be in the form of a valid cashier's
8 check paid to the order of the "Attorney General—State of Washington." Payment shall be
9 sent to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative
10 Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

11 **V. ATTORNEY'S COSTS & FEES**

12 **5.1** Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendant shall pay the
13 costs and reasonable attorney's fees incurred by the Plaintiff in pursuing this matter in the
14 amount of \$20,000. This amount shall be paid in full within ten (10) days of the entry of this
15 Consent Decree pursuant to Paragraph 5.3 below.

16 **5.2** In any successful action to enforce any part of this Consent Decree, Defendant
17 will pay the Attorney General its attorney's fees and costs, including reasonable attorney's fees
18 as provided by RCW 19.86.080.

19 **5.3** Payment under this provision shall be in the form of a valid cashier's check paid
20 to the order of the "Attorney General—State of Washington." Payment shall be sent to the
21 Office of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager,
22 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.

23 **VI. CIVIL PENALTY**

24 **6.1** Pursuant to RCW 19.86.140, a civil penalty of \$15,000 is imposed against
25 Defendant and is due within ten (10) days of the entry of this Consent Decree to be paid in
26

1 arrowoutlet.com shall be the sole property of the Defendant, but Defendant shall notify the
2 Attorney General's Office within 5 business days of selling the domain.

3 **VIII. RELEASE, DISMISSAL AND WAIVER OF CLAIMS**

4 **8.1** Upon entry of this Consent Decree, all claims in this matter, not otherwise
5 addressed by this Consent Decree are dismissed.


6
7 DONE IN OPEN COURT this ____ day of _____, 2013.

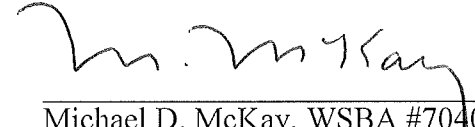
8
9
10 JUDGE/COURT COMMISSIONER

11 Approved for entry and presented by:

11 Approved for Entry, Notice of Presentation
12 Waived:

12 ROBERT M. MCKENNA
13 Attorney General

14
15 
16 JASON E. BERNSTEIN, WSBA #39362
17 Assistant Attorney General
18 State of Washington
19 Attorneys for Plaintiff

20
21 
22 Michael D. McKay, WSBA #7040
23 Krysta A. Liveris, WSBA #39581
24 McKay Chadwell, PLLC
25 Attorneys for Defendant
26