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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 13-2-38562-7 SEA

Plaintiff,

CONSENT DECREE

v.

FORM GIANT, LLC., also known as
change-my-address.com and Change My
Addresschange-of-address.us, an Ohio
Limited Liability Company; and
MATTHEW DAVID RILEY, as
President of member of Form Giant,
LLC.

Defendants.

I. JUDGMENT SUMMARY

1.1 Judgment Creditor: State of Washington

1.2 Judgment Debtors: KTM TEAM, LLC as successor by merger to FORM
GIANT, LLC., also known as change-my-address.com Change My Address and change-of-
address.us, an Ohio Limited Liability Company; and MATTHEW DAVID RILEY,
individually and as former Co-CEO of Form Giant, LLC and current CEO/Manager of KTM
Team, LLC

1.3 Principal Judgment Amount:

1 a. Restitution: Up to \$3,000,000.00

2 b. Costs and Fees: See ¶¶ 4.1 and 5.1

3 **1.4** Post Judgment Interest Rate: 12% per annum, beginning twelve
4 months from the date of Judgment.

5 **1.5** Attorney for Judgment Creditor: Paula Selis, Senior Counsel

6 **1.6** Attorney for Judgment Debtors: Mark S. Davidson, of Willams Kastner

7 Plaintiff, State of Washington, having filed a Complaint for Injunctive and Other
8 Relief on November 13, 2013; and

9 Defendants KTM Team, LLC, as successor by merger to Form Giant, LLC, also
10 known as change-my-address.com, Change My Address and change-of-address.us, (“KTM”)
11 and Matthew D. Riley (“Mr. Riley”) (together, “Defendants”) having been served with copies
12 of the Complaint herein; and

13 Plaintiff appearing by and through its attorneys, Robert W. Ferguson, Attorney
14 General, and Paula Selis, Senior Counsel; and

15 Defendants appearing by and through their attorney Mark S. Davidson of Williams
16 Kastner, and;

17 Plaintiff and Defendants having stipulated and agreed upon a basis for resolving the
18 matters alleged in the Complaint herein and to the entry of this Consent Decree (hereinafter
19 “Decree”) without the need for trial or adjudication of any issue of law or fact; and

20 Plaintiff and Defendants having agreed that this Consent Decree does not constitute
21 evidence or an admission regarding the existence or non-existence of any issue, fact, or
22 violation of any law alleged by Plaintiff; and

23 Defendants recognize and state that this Consent Decree is entered into voluntarily and
24 that no promises or threats have been made by the Attorney General’s Office or any member,
25 officer, agent, or representative thereof to induce them to enter into this Consent Decree,
26 except as provided herein; and

Defendants waive any right they may have to appeal from this Consent Decree; and

Defendants further agree that they will not oppose the entry of this Consent Decree on
the grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil
Procedure, and hereby waives any objections based thereon; and

1 Defendants further agree 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
3 for 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** This Court has jurisdiction of the subject matter of this action and of the parties.
9 Plaintiff's Complaint in this matter states claims upon which relief may be granted under the
10 provisions of the Consumer Protection Act, Chapter 19.86 RCW.

11 **2.2** Defendant KTM is a Florida Limited Liability Company, with its principal
12 executive office located at 10554 Success Lane, Dayton, Ohio 45459.

13 **2.3** Defendant Mr. Riley was formerly the Co-CEO of Form Giant, LLC and is
14 currently the CEO/Manager of KTM, and as such, controls its policies, activities, and practices,
15 including those alleged in the Complaint herein. Defendant Riley resides at 30 Black Walnut
16 Dr., Springboro, Ohio 45066.

17 **2.4** "Clear and Conspicuous" or "Clearly and Conspicuously," when referring to a
18 statement, disclosure, or any other information, means that such statement, disclosure, or other
19 information, by whatever medium communicated, is in readily understandable language and
20 syntax and presented in such size, color, font, contrast, appearance, location, and audibility,
21 and is sufficiently noticeable compared to other information with which it is presented that is
22 readily apparent to the person to whom it is disclosed such that the person can read and
23 comprehend what is being presented. If such statement, disclosure, or other information is
24 necessary as a modification, explanation or clarification to other information with which it is
25 presented, it must be presented in Direct Proximity to the information it modifies in a manner
26 that is readily noticeable and understandable. As to statements, disclosures, or any other
information made or presented on the Internet or other web-based applications or services, in
addition to the other requirements stated herein, "Clear and Conspicuous" or "Clearly and
Conspicuously," shall mean that such statements, disclosures or any other information shall be
placed in locations on the same webpage as the offer, term or limitation to which it relates

1 where it will be sufficiently prominent and readily seen, shall be labeled and presented in such
2 a way to indicate its importance and relevance, be in text that can be easily read and
3 understood by the reader, and be placed on the webpage in a position in Direct Proximity to the
4 offer, term or limitation.

5 Further, a disclosure of information is not Clear and Conspicuous if, among other
6 things, it is obscured by the background against which it appears or there are other distracting
7 elements, or the net impression of the statement, disclosure, or other information is inconsistent
8 with, contrary to, or in mitigation of the disclosure itself. Statements of limitation must be set
9 out in close conjunction with the benefits described or with appropriate captions of such
10 prominence that statements of limitation are not minimized, rendered obscure, presented in an
11 ambiguous fashion, or intermingled with the context of the statement so as to be confusing or
12 misleading. Nothing contrary to, inconsistent with, or in mitigation of any disclosure shall be
13 permitted. In all instances, the disclosure shall be presented prior to the consumer incurring
14 any financial obligation.

15 **2.5** “Direct Proximity” means a term is disclosed immediately beneath, beside, or
16 adjacent to an offer or term.

17 **III. INJUNCTIONS**

18 **3.1** The injunctive provisions of this Consent Decree shall apply to Defendants and
19 Defendants’ successors, assigns, officers, agents, servants, employees, representatives, and all
20 other persons or entities in active concert or participation with Defendants

21 **3.2** Defendants and their successors, assigns, transferees, officers, agents, servants,
22 directors, employees, and all other person or entities in active concert or participation with
23 Defendants shall be informed of the terms and conditions of this Decree within ten (10)
24 business days of its entry.

25 **3.3** Defendants and their successors, assigns, transferees, officers, agents, servants,
26 directors, employees, and all other persons or entities in active concert or participation with
27 Defendants are hereby enjoined and restrained from engaging in the following acts and
28 practices in connection with any Internet-related businesses:

1 a. Making any misrepresentations or material omissions, either implicitly
2 or explicitly, in the context of their sale, advertising or delivery of services including,
3 but not limited to misrepresentations or material omissions regarding the price of their
4 services, their true identity, or their affiliation with or relationship to the United States
5 Postal Service.

6 b. Failing to clearly and conspicuously disclose in print at least as large
7 and as bold as the largest, boldest print on the page the following disclosure directly
8 proximate to the name of Defendants' business: "(Business name)" is not affiliated
9 with the United States Postal Service (USPS). The USPS has an independent service
at (URL of USPS) where address changes can be made for a \$1.00 fee.").

10 c. Using the words "USPS," "U.S. Postal Service" or any other similar
11 terms that imply either directly or indirectly an affiliation with the US Postal Service
12 in sponsored search engine results such as Google Adwords.

13 d. Failing to make the following disclosure directly above the space on
14 Defendants' order page where consumers are required to fill in their credit card
15 information, in print at least as large and as bold as the largest, boldest print on the
order page: "Not Affiliated with U.S. Post Office."

16 e. Failing to clearly and conspicuously disclose the full price charged for
17 Defendants' services in print at least as large and as bold as the largest, boldest print
18 on the page, directly below Defendants' business name on their landing page, and
19 clearly and conspicuously in print at least as large and as bold as the largest, boldest
20 print on the page, directly above the first item of information required to charge the
21 consumer's credit card (e.g., directly above the cardholder's name, if that is the first
22 item of information required). Such disclosure shall include the following language:
23 "You will be charged (\$ price) for services on the credit card you provide to (Name of
Business)."

24 f. Failing to respond promptly to consumers' requests for fulfillment of
25 any guarantees, refund provisions in Defendants' contracts, complaints, or other
26 requests for service or information. For purposes of this paragraph, "promptly" shall
mean within five business days. For purposes of this paragraph, Defendants shall

1 maintain a toll-free telephone number that is answered by a live operator without
2 putting the consumer on hold for more than 60 seconds, except during periods where
3 there are delays which cannot be reasonably foreseen, including but not limited to
4 telephone service interruptions, technical difficulties or unanticipated staffing
5 problems.

6 g. Failing to maintain a record of consumers' requests for fulfillment of
7 any guarantees or refund provisions in Defendants' contracts and complaints.

8 h. Redirecting consumers to other offers, including but not limited to
9 discounts, coupons or reduced prices for services, once they have attempted to
10 navigate away from or close Defendants' website, provided that if other offers are
11 presented through methods that do not involve redirecting the consumer, they shall be
12 reasonably limited in number.

13 i. Failing to include a button on their landing page that redirects the
14 consumer to the USPS website, directly above any button that continues the
15 consumer's purchase of service. Such button shall be in the same size, and include the
16 same type size as the button that finalizes the purchase, and shall state as follows:
17 "Cancel purchase and redirect to USPS for \$1 address change."

18 j. Misrepresenting the terms or availability of refunds, guarantees,
19 money-back offers, or cancellation rights;

20 k. Failing to disclose, clearly and conspicuously, all material contract
21 terms before prospective customers have agreed to be charged for Defendants'
22 services;

23 l. Failing to provide delivery of address change services as promised;

24 m. Placing charges on consumers' credit cards or debit cards without
25 authorization to do so, or exceeding consumers' contractually agreed limitations on
26 authorized charges.

n. Billing consumers after they have cancelled their contracts.

o. If a consumer is contractually entitled to cancellation, failing to
promptly provide a refund.

1 p. Failing to disclose clearly and conspicuously Defendants' cancellation
2 and policy in the terms and conditions posted on their website and in any written terms
3 and conditions provided to the consumer; and

4 q. Violating the Consumer Protection Act, RCW 19.86 et seq.

5 IV. RESTITUTION

6 **4.1** Pursuant to RCW 19.86.080, Defendants shall provide up to \$ \$3,000,000.00
7 (the "Nationwide Restitution Pool") as nationwide restitution to consumers, pursuant to the
8 claims process described below. Consumers shall be entitled to make claims from the
9 Nationwide Restitution Pool during the 90-day period following entry of this Consent
10 Decree. In the event that payments to eligible consumers pursuant to this Section exceed
11 \$3,000,000.00, Defendants shall distribute restitution to claimants on a pro rata basis.
12 Restitution payments will be made on the 95th day following the entry of this Consent
13 Decree. In the event that payment to eligible consumers is less than \$3,000,000.00, the sum
14 of any funds remaining in the Nationwide Restitution Pool, up to \$350,000.00, shall be paid
15 to the Attorney Generals of Washington and Ohio, half of which shall be provided to each
16 state. The Washington Attorney General shall use the funds for recovery of its costs and
17 attorneys' fees in investigating this matter, future monitoring and enforcement of this
18 Consent Decree, future enforcement of RCW 19.86, or for any lawful purpose in the
19 discharge of the Attorney General's duties at the sole discretion of the Attorney General. No
20 part of this payment shall be designated as a civil penalty, fine and/or forfeiture.

21 **4.2** Pursuant to RCW 19.86.080, Defendants hereby agree to provide payment for
22 consumer restitution as follows:

23 a. Within 15 days of the Effective Date of this Consent Decree,
24 Defendants shall provide all prior customers who have not already received a full
25 refund or full chargeback, and who were charged for any change of address services
26 on or prior to the Effective Date of this Consent Decree, notice of their ability to make
a claim for a full refund, along with instructions for making such a claim. Such notice
will be sent to customers as their last known email addresses. The following shall
apply to such emails:

1 i. The “display name” in the email “FROM” line will be “Form
2 Giant Change-of- Address Services”

3 ii. The subject line of the email will read “IMPORTANT LEGAL
4 NOTICE REGARDING REFUND CLAIM.”

5 iii. Defendants shall make reasonable efforts to avoid having emails
6 sent to “junk” or “spam” folders, or otherwise filtered.

7 iv. If an email “bounces back,” Defendants shall provide the notice
8 by U.S. Mail postcard to the mailing address associated with the consumer’s
9 account record, if available. The postcard shall contain language that is the
10 same as, or substantially similar to, the email notice, subject to space
11 limitation.

12 v. The body of the email shall state as follows:

13 Dear Consumer:

14 Our records reveal that you purchased change-of-address
15 services through our company. Pursuant to an agreement settling a lawsuit by
16 the Washington State Attorney General’s Office and the Ohio Attorney
17 General’s Office relating to those services, you are entitled to a refund of all
18 but \$1.00 of the amount you paid.

19 To obtain your refund, you can fill out the online claim form at (URL)
20 or call us, toll-free, at (phone number). In order to make a valid claim, you
21 must either call us or fill out the claim form by (add date—90 days after entry
22 of Consent Decree). Refunds will be either credited to the credit card you used
23 to purchase services from our company, if the card is still on file with us, or
24 through a check that will be mailed to you. Refunds will be provided by (add
25 date—95 days after entry of Consent Decree). The amount of the refund will
26 be based upon the total number of refund claims our company receives from
consumers. If you have any questions about this refund program and you are a
resident of Ohio or any state other than Washington, you may contact the Ohio
Attorney General’s Office at (phone number). If you are a Washington State

1 resident, you may contact the Washington State Attorney General’s Office at
2 (phone number).

3 Sincerely,

4 Form Giant LLC, doing business as Change-my-address.com

5 vi. If Defendants are not contacted by the prior customers to whom
6 emails were sent pursuant to paragraph 4.2 (a) above within 30 days of
7 providing email notice, Defendants shall send a second email to those
8 customers who have not responded. The body of the email shall read the same
9 as the email body described in Paragraph 4.2(a)(v), except that the response
10 date for making a valid claim shall be 60 days after the entry of the Consent
11 Decree, which date shall be stated in the email, and the “display” name in the
12 FROM line shall read the same as described in Paragraph 4.2(a)(i). The
13 subject line of the email shall state as follows: “SECOND NOTICE--
14 IMPORTANT LEGAL NOTICE REGARDING REFUND CLAIM.”

15 b. Defendants shall fully refund all customers who purchased address
16 change services from them and who make a claim pursuant to the process described
17 above. Such refunds shall be made within 95 days of the entry of this Consent Decree,
18 and shall be in the form of a credit to the consumer’s credit card for the amount paid to
19 Defendants. If Defendants do not possess credit card information for the consumer,
20 Defendants shall instead mail a check, drawn to the order of the consumer for the full
21 amount paid, and shall mail the check to the consumer’s address. If Defendants have
22 already provided a refund to the consumer, then no refund shall be required.

23 c. Forty-five days after the entry of this Consent Judgment, Defendants
24 shall provide status reports on the number of claims made and the identity of the
25 claimants. At the conclusion of the 95-day period following entry of this Decree,
26 Defendants shall provide a full accounting to Plaintiff, identifying the consumers who
received refunds (name, address, manner of refund (i.e. credit card credit, check, etc.),
email and telephone number), the amounts of the refunds, and the dates the refunds
were made. Defendants shall also provide a full accounting to Plaintiff of those
consumers who were provided refunds prior to the entry of this Consent Decree,

1 including name, address, email and telephone number, amount of refund, manner (i.e.
2 credit card credit, check, etc.) and date of refund.

3 d. Defendants shall also pay all Settlement Administration Costs, and any
4 Settlement Administration Costs shall have no effect on and will be completely
5 independent of the Nationwide Restitution Pool, and will not reduce the amount of
6 restitution received by consumers and/or Plaintiff.

7 i. Settlement Administration Costs shall mean all fees and
8 expenses incurred as a result of the procedures and processes required by this
9 Consent Decree, as ordered by the Court, and/or as agreed to by the Parties.

10 **4.3** Defendants shall provide full refunds, less \$1.00, to consumers who complain
11 about Defendants' services to the Washington State Attorney General, regardless of the date
12 those complaints are received. Refunds shall be made within 14 days of Defendants' receipt
13 of written notice of such complaint from the Washington State Attorney General.

14 **V. PAYMENT TO THE STATE**

15 **5.1** Pursuant to RCW 19.86.080, in the event the payment made to Plaintiff under
16 Paragraph 4.1 is less than \$200,000, Defendants shall pay Plaintiff the difference between the
17 amount actually received and \$200,000, to defray the costs and reasonable attorneys' fees
18 incurred by Plaintiff in pursuing this matter. Half of such sum shall be paid to the Attorney
19 General of Washington and half to the Attorney General of Ohio for its costs and fees.

20 **5.2** Payment to Plaintiff under the provisions of this Consent Decree shall be in the
21 form of a valid check paid to the order of the "Attorney General—State of Washington" and
22 shall be transmitted by receipted delivery service on the 95th day after entry of the Consent
23 Decree to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative
24 Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188.

25 **5.3** In any successful action to enforce any part of this Consent Decree, Defendants
26 will pay the Attorney General its attorney's fees and costs, including reasonable attorney's fees as
provided by RCW 19.86.080.

1 **VI. ENFORCEMENT**

2 **6.1** A violation of any of the injunctions contained in this Consent Decree, as
3 determined by the Court, shall subject the Defendants to a civil penalty of up to \$20,000.00 per
4 violation pursuant to RCW 19.86.140.

5 **6.2** Violation of any of the terms of this Consent Decree, as determined by the Court,
6 shall constitute a violation of the Consumer Protection Act, RCW 19.86.020.

7 **6.3** This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
8 retained for the purpose of enabling any party to this Consent Decree with or without the prior
9 consent of the other party to apply to the Court at any time for enforcement of compliance with
10 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

11 **6.4** Representatives of the Office of the Attorney General shall be permitted to
12 access, inspect and/or copy business records or documents under control of Defendants in
13 order to monitor compliance with this Consent Decree, pursuant to the Civil Rules, provided
14 that the inspection and copying shall be done in such a way as to avoid disruption of
15 Defendants' business activities.

16 **6.5** Representatives of the Office of the Attorney General may be permitted to
17 question Defendants, or any officer, director, agent, or employee of any corporation affiliated
18 with Defendants, in deposition, pursuant to the provisions and notice requirements of CR 30, in
19 order to monitor compliance with this Consent Decree.

20 **6.6** Under no circumstances shall this Consent Decree or the names of the state of
21 Washington or the Office of the Attorney General, Consumer Protection Division, or any of
22 its employees or representatives be used by Defendants' agents or employees in connection
23 with the promotion of any product or service or an endorsement or approval of Defendants'
24 practices.

25 **6.7** Nothing in this Consent Decree shall be construed as to limit or bar any other
26 governmental entity or consumer from pursuing other available remedies against Defendants,

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1 **VII. DISMISSAL AND WAIVER OF CLAIMS**

2 **7.1.** Upon entry of this Consent Decree, all claims in this matter, not otherwise
3 addressed by this Consent Decree are dismissed with prejudice.

4 DONE IN OPEN COURT this ____ day _____, 2014.

6
7 _____
8 JUDGE/COURT COMMISSIONER

9 Approved for entry and presented by:

10 ROBERT W. FERGUSON
11 Attorney General

12 _____
13 PAULA SELIS, WSBA #12823
14 Assistant Attorney General
15 Attorneys for Plaintiff
16 State of Washington

17 Agreed to, Approved for Entry, and
18 Notice of Presentation Waived:

19 _____
20 Mark S. Davidson, WSBA #06430
21 Attorneys for Defendants
22 WILLIAMS, KASTNER & GIBBS PLLC
23 601 Union Street, Suite 4100
24 Seattle, WA 98101-2380
25 Telephone: (206) 628-6600
26 Fax: (206) 628-6611
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