FILED
AUG 16 2007
PAM L. DANIELS
COUNTY CLERK
SNOHOMISH CO. WASH

STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. BLIND CHILDREN SERVICES OF PUGET SOUND in its own name and doing business as, ABANDONED CHILDREN'S FOUNDATION, ABCC, ABCCWW, ACF, AMERICAN BLIND CHILDREN'S COUNCIL, AMERICAN BLIND CHILDREN'S COUNCIL OF WESTERN WASHINGTON, BCSOPS, HANDICAPPED CHILDREN'S OUTREACH FOR WASHINGTON STATE, HANDICAPPED CHILDREN'S OUTREACH, HCOWS; DARIN ANTHONY DEWITT, Owner of Blind Children Services of Puget Sound, individually and as part of his marital community; ROBERT MELBOURNE SHAY, a/k/a R.M. FUKA, individually and as part of his marital community, Defendants.	NO. 07-2-01895-4 STIPULATED JUDGMENT AND ORDER AS TO ROBERT MELBOURNE SHAY

I. JUDGMENT SUMMARY

1.1 Judgment Creditor: State of Washington

1.2 Judgment Debtors: Robert Melbourne Shay, a/k/a R.M. Fuka, individually and as part of his marital community.

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1.3 Principal Judgment Amount:

a. Costs and Fees: $0.00

b. Restitution: **$613.00** (See Section VI below)

c. Civil Penalties: **$0** ($0 imposed; $16,000.00 suspended on condition of compliance with all of the terms of the Judgment and Decree.)

d. Total Judgment: **$613.00** (plus $16,000.00 civil penalties suspended on condition of compliance with all of the terms of the Judgment and Decree).

1.4 Post-Judgment Interest Rate: 12 percent per annum (for any amount owing after the agreed upon final payment date has passed).

1.5 Attorney for Judgment Creditor: Shannon Smith, Assistant Attorney General

1.6 Attorney for Defendants: Roger Hawkes, Esq.

Plaintiff, State of Washington, commenced this action on September 19, 2006 pursuant to RCW 19.86, the Consumer Protection Act, and RCW 19.09 the Charitable Solicitations Act. The Defendant was served with the Summons and Complaint.

Plaintiff appeared by and through its attorneys, Robert McKenna, Attorney General; and Shannon Smith, Assistant Attorney General; and Defendant appeared through his attorney, Roger Hawkes.

Plaintiff and Defendant have agreed upon a basis for adjudication of the matters alleged in the Complaint, and to the entry of this Stipulated Judgment, Findings of Fact, Conclusions of Law, Judgment and Decree (hereinafter referred to as "Stipulated Judgment" or "Decree" or "Order") pursuant to CR 54.

The Court has determined there is no just reason for delay in the entry of final judgment against Defendant, and being fully advised, the Court hereby makes and enters the following:

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II. FINDINGS OF FACT

2.1 This action was commenced by the State of Washington pursuant to RCW 19.86, the Consumer Protection Act and RCW 19.09, the Charitable Solicitations Act.

2.2 Unless otherwise specified, the term "Defendant" as used in this document shall mean Robert Melbourne Shay, a/k/a R. M. Fuka.

2.3 Defendant accepted or herby waives personal service of the Summons and Complaint.

2.4 Defendant recognizes and states that this Stipulated Judgment is entered into voluntarily and that no promises or threats have been made by the Attorney General's Office or any member, official, agent, or representative thereof to induce Defendants to enter into this Stipulated Judgment except as provided herein.

2.5 Defendant further agrees that he will not oppose the entry of this Stipulated Judgment on the grounds that it fails to comply with Rule 65(d) of the Rules of Civil Procedure and hereby waive any objections based thereon.

2.6 The violations alleged in the State's Complaint, have been engaged in by Defendant wholly or in part in Snohomish County, state of Washington, and elsewhere in the state of Washington. Defendant transacts or has transacted business in the state of Washington.

2.7 Defendant Robert Melbourne Shay, a/k/a R.M. Fuka, directs, manages, or controls the finances of Blind Children Services of Puget Sound, and as such controls its policies, activities, and practices, including those alleged in this Complaint. Defendant Robert Melbourne Shay resides at 22106 7th Street, S.W., Unit A, Edmonds, Washington, 98026. Defendant Robert Melbourne Shay is married to Nellie M. Shay and together they constitute a marital community. All actions taken by Defendant Robert Melbourne Shay as alleged in this Complaint are for the benefit of his marital community. Defendant resides in the state of Washington and transacts or has transacted business in the state of Washington.

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2.8 Blind Children Services of Puget Sound was registered as a charitable organization with the Secretary of State from April 9, 2003 until May 6, 2005. Blind Children Services of Puget Sound was authorized to solicit charitable contributions in the State of Washington under the names Abandoned Children's Foundation, ABCC, ABCCWW, ACF, American Blind Children's Council, American Blind Children's Council of Western Washington, BCSOPS, Handicapped Children's Outreach for Washington State, Handicapped Children's Outreach, and HCOWS from April 9, 2003 until May 6, 2005. The Secretary of State canceled on May 6, 2005. Blind Children Services of Puget Sound, under the direction and control of Defendant Robert Melbourne Shay, continued to solicit and collect charitable contributions through at least March of 2006 without being registered as a charitable organization with the Secretary of State.

2.9 In its written solicitation material distributed to Washington consumers, Blind Children Services of Puget Sound, under the direction and control of Defendant Robert Melbourne Shay, misrepresented that Blind Children Services of Puget Sound was registered with the Secretary of State under Registration No. 10386, when it was not so registered.

2.10 In written solicitation material it distributed to Washington consumers, Blind Children Services of Puget Sound, under the direction and control of Defendant Robert Melbourne Shay, failed to clearly and conspicuously disclose in the body of the solicitation material that the Defendants' notice of solicitation is on file with the Secretary of State and that the potential donor could obtain additional financial disclosure information from the Secretary of State at the Secretary of State's published number.

III. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Court hereby makes the following Conclusions of Law:

3.1 This Court has jurisdiction of the subject matter of this action and of the parties. The Plaintiff's Complaint in this matter states claims upon which relief may be granted under the

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provisions of RCW 19.86, the Consumer Protection Act, and RCW 19.09 the Charitable Solicitations Act.

3.2 Defendant's acts and practices as described in Finding of Fact 2.8 violate RCW 19.09.065 and 19.09.100(16), (18), and are *per se* violations of RCW 19.86 the Consumer Protection Act pursuant to RCW 19.09.340.

3.3 Defendant's acts and practices as described in Finding of Fact 2.9 violate RCW 19.09.100(12), and are *per se* violations of RCW 19.86, the Consumer Protection Act pursuant to RCW 19.09.340. Defendant's acts and practices as described in Finding of Fact 2.9 also have the capacity to mislead a substantial number of consumers, are unfair and deceptive, and are unfair methods of competition and therefore constitute violations of RCW 19.86.020, which prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, notwithstanding that they are *per se* violations of the Consumer Protection Act pursuant to RCW 19.09.340.

3.4 Defendant's acts and practices as described in Finding of Fact 2.10 violate RCW 19.09.100(1), (18), and are *per se* violations of RCW 19.86 the Consumer Protection Act pursuant to RCW 19.09.340. Defendant's acts and practices as described in Finding of Fact 2.10 also have the capacity to mislead a substantial number of consumers, are unfair and deceptive, and are unfair methods of competition and therefore constitute violations of RCW 19.86.020, which prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, notwithstanding that they are *per se* violations of the Consumer Protection Act pursuant to RCW 19.09.340.

3.5 Plaintiff, State of Washington, is authorized by RCW 19.09.340 and 19.86.080 to enjoin violations of the Consumer Protection Act, to obtain restitution on behalf of persons harmed by such violations, and to obtain such further and other relief as the court may deem appropriate, including civil penalties up to the amount of $2000.00 per violation, and attorneys' fees and costs.

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3.6 Plaintiff is entitled to a Judgment enjoining and restraining Defendant and any and all persons in active concert or participation with Defendant from engaging in the future in the acts or practices described in Findings of Fact 2.8 through 2.10 that violate the Consumer Protection Act or the Charitable Solicitation Act.

3.7 Plaintiff is entitled to a Judgment ordering Defendant to comply with the injunctive provisions described below.

3.8 Plaintiff is entitled to a Judgment ordering Defendant to pay civil penalties as described below.

3.9 Plaintiff is entitled to a Judgment ordering Defendant to pay restitution as described below.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby makes the following Judgment and Order:

It is hereby ADJUDGED, ORDERED, and DECREED as follows:

IV. INJUNCTIONS

4.1 The injunctive provisions of this Judgment and Order shall apply to the Defendant, and the Defendant's successors, assigns, officers, agents, servants, employees, representatives, affiliates, and all other persons or entities in active concert or participation with the Defendants.

4.2 Defendant shall immediately inform all successors, assigns, transferees, officers, agents, servants, employees, representatives, attorneys and all other persons or entities in active concert or participation with Defendant of the terms and conditions of this Judgment and Order.

4.3 **Imposed Injunctions.** Defendant and all successors, assigns, transferees, officers, agents, servants, employees, representatives, affiliates, attorneys and all other persons or entities in active concert or participation with Defendant is hereby permanently enjoined and restrained from directly or indirectly engaging in the following acts or practices in the State of Washington:

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(a) Soliciting or collecting charitable contributions without current registration as a charitable organization with the Washington Secretary of State as required by RCW 19.09.065, as currently enacted or subsequently amended;

(b) If Defendant or the any entity he owns, operates, manages, consults with, or works for is exempt from registration with the Washington Secretary of State pursuant to RCW 19.09.076(1) and WAC 434-120-100(1)(c), as currently enacted or subsequently amended, Defendant and any such entity shall not solicit or collect charitable contributions unless and until he or it file an optional registration with the Washington Secretary of State as provided in WAC 434-120-110, as currently enacted or subsequently amended;

(c) Representing, directly or by implication, that Defendant or any other charitable organization or entity Defendants may form, own, operate, manage, consults with, or works for is registered with the Washington Secretary of State unless he or it is so registered;

(d) Owning, operating, managing, controlling, consulting with, or working for a charitable organization in the State of Washington without that organization complying with the recordkeeping requirements established by RCW 19.09.200, .210 and WAC 434-120-125, -130, -135, -140, as currently enacted or subsequently amended;

(e) Engaging in any commercial fundraising or commercial coventurer activities, as defined by RCW 19.09 or WAC 434-120, as currently enacted or subsequently amended, on behalf of any entity without being registered with the Secretary of State as a commercial fundraiser or commercial coventurer as required by RCW 19.09.065, as currently enacted or subsequently amended;

(f) Owning, operating, managing, controlling, consulting with, or working for a charitable organization that fails to make any of the disclosures required by

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RCW 19.09.100, as currently enacted or subsequently amended, other applicable law, in any oral or written solicitations.

4.4 Suspended Injunctions. The following injunctions are set forth herein as a remedy for the violations committed by Defendant, but their implementation is suspended upon condition that Defendant shall not commit any material violation of the other injunctive terms of this Stipulated Judgment. Should the Court find in the future that the Defendant has violated materially any of the injunctive provisions of this Stipulated Judgment, then the parties hereby stipulate and agree that upon a showing of such violation, the Court shall enter the following injunctive relief:

Defendant and all successors, assigns, transferees, officers, agents, servants, employees, representatives, affiliates, attorneys and all other persons or entities in active concert or participation with Defendant are hereby permanently enjoined and restrained from directly or indirectly engaging in the following acts or practices in the State of Washington:

(a) Engaging in charitable solicitation, as defined by RCW 19.09, as currently enacted or subsequently amended, of any kind whatsoever, including but not limited to any solicitation that states or implies any appeal for the assistance or support of veterans, children, children's hospitals, or other programs to benefit youth, battered women, domestic violence victims, the disabled, or any other charitable or purportedly charitable cause of any kind, regardless of whether the beneficiary or beneficiaries of such solicitations are individuals, groups, organizations, associations, for-profit corporations, non-profit corporations, hospitals, group homes, or other entities;

(b) Owning, operating, managing, consulting with, working for, or on behalf of any charitable organization that conducts charitable solicitations in the State of Washington, whether as an owner, co-owner, partner, employee, manager, salesperson, telefunder or telemarketer, solicitor, script writer or editor, advisor, consultant, or independent contractor; and

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(c) Engaging in the business of a commercial fundraiser, commercial coventurer, or fundraising consultant as defined in RCW 19.09 or WAC 434-120 as currently enacted or subsequently amended, or owning, managing, or working for or on behalf of such commercial fundraiser or fundraising consultant, whether as an owner, co-owner, partner, employee, manager, salesperson, telefunder or telemarketer, solicitor, script writer or editor, advisor or consultant, or independent contractor.

V. CIVIL PENALTIES

5.1 Pursuant to RCW 19.86.140, Defendant is liable for civil penalties in the amount of $16,000.00. However, the entire $16,000.00 is suspended on condition of compliance with all of the terms of this Judgment and Decree.

5.2 The suspended portion of the civil penalty shall be imposed by the Court upon a showing by the State, upon reasonable notice to the Defendant, that the Defendant materially has violated one or more of the terms of this Judgment and Decree. This suspended civil penalty shall be viewed as analogous to liquidated damages (or a liquidated penalty) for all of the past violations committed by Defendant in addition to whatever violations Defendant may commit in the future, to be payable in case of a material violation in the future.

VI. RESTITUTION

6.1 Pursuant to RCW 19.86.080, Defendant agrees to remit to the Attorney General's Office the sum of $613.00 as restitution to consumers who have made charitable donations to Blind Children Services of Puget Sound. This amount reflects restitution to those consumers who donated to Blind Children Services of Puget Sound after May 6, 2005, and who complained to or inquired of Attorney General's Office or the Secretary of State's Office regarding their donations, or whose identity the Attorney General's Office obtained through its investigation. The Defendants shall remit this sum no later than August 1, 2007.

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6.2 If the Attorney General's Office is unable to distribute restitution to any consumer entitled to restitution under this section, the Attorney General's Office, at its discretion, shall apply that amount toward additional attorney's fees or costs, and/or toward consumer education.

6.3 Defendants shall make this payment by cashier's check, made payable to the Attorney General—State of Washington, which shall be delivered to the Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188, to the attention of Cynthia Lockridge.

VII. ENFORCEMENT

7.1 Pursuant to RCW 19.86.140, any violation of the terms of this Judgment may form the basis for further enforcement proceedings.

7.2 The violation of any of the terms of this Judgment shall constitute a violation of the Consumer Protection Act, RCW 19.86 et seq.

7.3 Jurisdiction is retained for the purpose of enabling any party to this Judgment, with or without the prior consent or approval of the other party, to apply to the Court at any time for the enforcement of compliance therewith, the punishment of violations thereof, or the modification or clarification thereof.

7.4 Nothing in this Judgment shall be construed as to limit or to bar any other governmental entity or any other consumer in the pursuit of additional remedies against Defendant.

7.5 Representatives of the Office of Attorney General shall be permitted, upon 10 days' notice to Defendant, to access, inspect, and/or copy all business records or documents under the control of Defendant, in order to monitor compliance with the injunctive provisions of this Stipulated Judgment.

7.6 Under no circumstances shall this Judgment or the names of the State of Washington or the Office of the Attorney General, Consumer Protection Division, the

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under the control of Defendant, in order to monitor compliance with the injunctive provisions of this Stipulated Judgment.

7.6 Under no circumstances shall this Judgment or the names of the State of Washington or the Office of the Attorney General, Consumer Protection Division, the Secretary of State's Office, or any of their employees or representatives be used by Defendant's agents or employees in connection with the promotion of any product or service or an endorsement or approval of Defendant's practices.

7.7 Defendant shall bear Plaintiff's reasonable costs, including reasonable attorneys' fees, for enforcing this Judgment in any successful action to enforce any of its provisions.

7.8 The Court finding no just reason for delay, hereby expressly directs entry of this Judgment.

SO ORDERED this _____ day of AUG 15 2007, 2007.

LESTER H. STEWART
COURT COMMISSIONER

JUDGE/COURT COMMISSIONER

Presented by

ROBERT M. MCKENNA
Attorney General

for #32908

SHANNON E. SMITH, WSBA #19077
Senior Counsel
Attorneys for Plaintiff
State of Washington

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

ROBERT MELBOURNE SHAY
Defendant

ROGER E. HAWKES, ESQ., WSBA #5173
Attorney for Defendant

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