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KING COUNTY
SUPERIOR COURT

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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

NO. **08-2-14566-2SEA**
CONSENT DECREE

v.

SubscriberBASE Holdings, Inc.,
SubscriberBase, Inc., their wholly-
owned subsidiaries, and their d/b/a's,

Defendants.

I. DECREE SUMMARY

- 1.1. Decree Creditor: State of Washington
- 1.2. Decree Debtors: SubscriberBASE Holdings, Inc., SubscriberBASE, Inc., their wholly-owned subsidiaries, and all entities under whose names they do business
- 1.3. Principal Decree Amount:
 - a. Civil Penalties: \$350,000.00, provided that \$55,000.00 shall be payable and \$295,000.00 suspended on condition of compliance with all of the terms of this Consent Decree
 - b. Restitution: See Section IV.
 - c. Costs and Attorneys' Fees: \$69,365.50

CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7745

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1.4. Total Decree Amount: \$419,365.50, with \$295,000.00 suspended pursuant to Section V.

1.5. Attorney for Decree Creditor: Paula Selis, Senior Council

1.6. Attorney for Decree Debtors: Lisa Jose Fales, Gilead I. Light, J. Douglas Baldrige of Venable LLP

Plaintiff, State of Washington, having commenced this action on April 30, 2008, pursuant to the Unfair Business Practices—Consumer Protection Act (“Consumer Protection Act”), chapter 19.86 RCW; and

Defendants, SubscriberBASE Holdings, Inc., SubscriberBASE, Inc., their wholly-owned subsidiaries, and all entities under whose names they do business having been served with a Summons and Complaint filed in this matter or having waived service; and

Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney General; and Paula Selis, Senior Council and Defendants appearing through their attorneys Lisa Jose Fales; Gilead I. Light, and J. Douglas Baldrige of Venable LLP; and

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

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

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

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

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

4 Defendants further agree that this Court shall retain jurisdiction of this action for the
5 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for
6 all other purposes; and

7 The Court finding no just reason for delay;

8 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
9 follows:

10 II. GENERAL

11 2.1. Jurisdiction. This Court has jurisdiction of the subject matter of this action and
12 of the parties. Plaintiff's Complaint in this matter states claims upon which relief may be
13 granted under the provisions of the Consumer Protection Act, Chapter 19.86 RCW.

14 2.2. Definitions.

15 a. "Defendants" means SubscriberBASE Holdings, Inc., SubscriberBASE, Inc.,
16 their wholly-owned subsidiaries, and any and all entities under whose names they do business.

17 b. "Promotional Offer" means an advertising offer or campaign, created and/or
18 operated by Defendants on Defendants' websites, where a consumer may earn a "free" gift
19 item, prize, award, premium or similarly-denominated item in exchange for completing Third
20 Party Sponsor Offers.

21 c. "Landing Page" means, in online marketing, a specific web page that a visitor
22 reaches after clicking a link or advertisement in an e-mail or banner ad. This page usually
23 showcases content that is an extension of the link or ad.

24 d. "Third Party Sponsor Offer" means goods or services offered by a third party
25 and promoted on Defendants' Promotional Offer websites.
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3 **III. INJUNCTIONS**

4 3.1. Application of Injunctions. The injunctive provisions of this Consent Decree
5 shall apply to Defendants, and Defendants' successors, assigns, officers, agents, servants, and
6 employees, and all other persons or entities in active concert or participation with Defendants.

7 3.2. Notice. Defendants shall immediately inform all successors, assigns, officers,
8 agents, servants, employees, and all other persons or entities in active concert or participation
9 with Defendants of the terms and conditions of this Consent Decree.

10 3.3. Injunctions. Defendants and their successors, assigns, officers, agents,
11 servants, employees, and all other persons or entities in active concert or participation with
12 Defendants are hereby enjoined and restrained from, in the context of a Promotional Offer,
13 advertising, offering, selling, promoting, marketing or delivering any products or services,
14 prizes, premiums, "free" or similarly-denominated items, trial offers, memberships,
15 promotional items, or sweepstakes by any means whatsoever, to consumers resident in the
16 State of Washington.

17 3.4. Defendants and their successors, assigns, officers, agents, servants, employees,
18 and all other persons or entities in active concert or participation with Defendants shall:

19 a. Ensure that those consumers identifying themselves as Washington residents are
20 prevented from participating in any Promotional Offer, and

21 b. Include a clear and conspicuous disclosure on the Landing Page of Defendants'
22 Promotional Offer websites stating that the Promotional Offer is not valid to Washington
23 residents.

24 3.5. Defendants and their successors, assigns, officers, agents, servants, employees,
25 and all other persons or entities in active concert or participation with Defendants are, in the
26 context of Promotional Offers, hereby enjoined and restrained from:

- 1 a. Using Washington consumers' personal information for any commercial gain;
- 2 b. Selling, leasing or otherwise providing a Washington resident's personal
- 3 information to affiliated entities or any other entity or person; and
- 4 c. Representing, either directly or by implication, that any of their marketing,
- 5 sales, business practices, or any of their activities have been approved, endorsed, or permitted
- 6 by the Office of the Attorney General.

7 **IV. RESTITUTION**

8 4.1. Pursuant to RCW 19.86.080, Defendants shall pay consumer restitution as

9 follows.

10 a. Within thirty (30) days of entry of the Consent Decree, Defendants shall contact

11 by email all Washington consumers who completed a Third Party Sponsor Offer, and offer such

12 consumers a refund for all amounts required to be paid to receive the third party product or

13 service so as to qualify for Defendants' free gift item (the "Qualifying Payment").

14 b. Where a Washington consumer paid more than the Qualifying Payment,

15 Defendants shall also offer such consumer a refund limited to one month's payment that the

16 consumer paid for the Third Party Sponsor Offer, provided that the consumer verifies in a sworn

17 statement that he or she attempted unsuccessfully and within the time required by the third party

18 sponsor to cancel the product or service.

19 c. Consumers shall have sixty (60) days from the date of the email notification to

20 request a refund as provided for herein.

21 d. If a consumer has not responded to the email notification within twenty (20)

22 days, Defendants shall send an additional identical notification to the consumer via U.S. mail

23 within thirty (30) days after sending the email notification.

24 e. The subject line of the email notification shall read: "Washington State Attorney

25 General's Office Refund Offer for "Free" Prize Promotion."

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f. The email and letter notification text should read:

“Dear (Defendants fill in consumer’s name):

Our records indicate that between 2004 and 2007, you responded to a promotional offer for a “free” (Defendants fill in item promoted, i.e., HDTV, digital camera, etc.) from (Defendants fill in domain on which item was promoted, i.e., www.retailreportcard.com). In order to be eligible to obtain the “free” (Defendants fill in item promoted), you accepted one or more trial subscriptions or other offers. The offer(s) you accepted was/were for (Defendants identify offer(s) accepted, i.e. 4 posters for \$2, movie subscription, etc.).

Pursuant to a settlement agreement reached between our company and the Washington State Attorney General’s Office, you are eligible to receive a refund for the offers you accepted and paid for. Our company has a record of which offers you accepted. Your refund is limited to all amounts required to be paid to receive the product or service originally advertised in the offer so as to qualify for the free gift, usually a one-month payment and/or minimum purchase plus handling and shipping charges. You will also be eligible to receive an additional refund limited to one additional month’s payment for the product or service if you verify in the attached sworn statement that your attempts at cancelling the product or service within the time required to avoid extra payment were unsuccessful.

To receive your refund, please complete the attached form and either mail it to: [Defendants insert postal address] or email it to: [Defendants insert email address] no later than 60 days from the date of this email. To learn more about the refund program, please call the Washington State Attorney General’s Office’s Consumerline toll-free at 1-800-692-5082 or locally at 206-464-6811. You may also visit the Web site for the Washington State Attorney General’s Office at www.atg.wa.gov.”

If the notification is the letter sent via U. S. mail by Defendants pursuant to Paragraph 4.1(d), the deadline for sending the consumer’s response shall be thirty days from the date of the letter and the notification shall be modified accordingly.

g. The email and U.S. mail notifications sent by Defendants in compliance with 4.1 shall not include any advertising or information other than what is required herein.

4.2. The refund form referred to in 4.1(f) should require the consumer to identify his or her name, email and physical address, and must state that if the consumer paid more the Qualifying Amount and seeks to be refunded for these additional payments, that he or she must

1 swear to and sign the following statement (which shall be included in the form) in order to
2 receive the additional refund provided for in 4.1(b):

3
4 "I declare under penalty of perjury under the laws of the state in which I reside
5 that I attempted unsuccessfully to contact (consumer must fill in name of bank,
6 credit card company, merchant, or other entity contacted) in order to cancel the
7 offer I accepted for (consumer should fill in product or service accepted) within
8 the time required to avoid extra payment over the minimum purchase required,
9 but I was nonetheless charged the extra payment. I further declare that I have
not already been reimbursed for the extra payment by the merchant, my credit
card company, bank, SubscriberBASE, Inc. or any other entity. I hereby
authorize SubscriberBASE, Inc. to contact this bank, credit card company,
merchant or other entity and verify my transactions."

10 A line for the consumer's signature and the date must follow the statement.

11 4.3. Any consumers who completed the terms of a Promotional Offer and received a
12 free gift from Defendants shall be ineligible to receive any refunds. Any consumer who
13 previously contacted Defendants and to whom Defendants provided gifts, cash or merchandise
14 in response to the consumer contact, shall be ineligible to participate in the refund program
15 described herein.

16 4.4. Within ninety (90) days of the date the email notification provided for in 4.1 (a)
17 is sent, Defendants shall mail refund checks to all eligible Washington consumers from whom
18 Defendants received refund request forms as described in 4.1 and 4.2.

19 4.5. Within one hundred and ten (110) days of the date the email notification
20 provided for in 4.1 (a) is sent, Defendants shall provide to Plaintiff a report identifying the
21 names, physical addresses, email addresses, amounts and dates of refunds made to all
22 Washington consumers.

23 4.6. Defendants shall attest to the accuracy of the report and to the accuracy of all of
24 the records upon which they relied in order to issue the refunds. Defendants shall retain copies
25 of all transmissions and correspondences to and from the consumers they contact and shall
26 produce them upon the request of Plaintiff.

1 **V. CIVIL PENALTIES**

2 5.1. Pursuant to RCW 19.86.140, Plaintiff shall have and recover, and Defendants
3 shall be liable for and shall pay, civil penalties of \$350,000.00. However, \$295,000.00 of the
4 civil penalties are suspended conditioned upon Defendants' full compliance with the terms of
5 this Consent Decree.

6 5.2. Payment owing under 5.1 shall be in the form of a valid check paid to the order
7 of the "Attorney General—State of Washington" with \$55,000.00 due and owing immediately
8 upon entry of the Consent Decree. Payment shall be sent to the Office of the Attorney
9 General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue,
10 Suite 2000, Seattle, Washington, 98104-3188.

11 **VI. ATTORNEY COSTS AND FEES**

12 6.1. Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay
13 the costs and reasonable attorneys' fees incurred by the Plaintiff in pursuing this matter in the
14 amount of \$69,365.50.

15 6.2. Payment owing under 6.1 shall be in the form of a valid check paid to the order
16 of the "Attorney General—State of Washington" and shall be due and owing upon entry of the
17 Consent Decree. Payment shall be sent to the Office of the Attorney General, Attention:
18 Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle,
19 Washington, 98104-3188.

20 **VII. ENFORCEMENT**

21 7.1. Violation of any of the terms contained in this Consent Decree shall subject
22 Defendants to a civil penalty of up to \$25,000.00 per violation pursuant to RCW 19.86.140. In
23 the event the Attorney General believes that Defendants may have violated any terms of this
24 Decree, representatives of the Office of the Attorney General shall give written notice via
25 certified mail to Defendants and to Defendants' counsel, designated by Defendants as Lisa Jose
26 Fales of Venable LLP, of the specific alleged violation(s) and allow Defendants fourteen (14)

1 days to respond to the notice and to cure the alleged violation(s) prior to bringing an
2 enforcement action pursuant to this paragraph. Such notice shall not be required in those cases
3 where an Attorney General concludes that because of an alleged violation, a threat of
4 immediate and irreparable consumer harm requires immediate action.

5 7.2. In any action to enforce the terms of this Decree, Plaintiff may seek additional
6 remedies, including, but not limited to, restitution, injunctive relief, and reasonable attorneys'
7 fees and costs, in addition to any other remedies permitted by law.

8 7.3. This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
9 retained for the purpose of enabling any party to this Consent Decree with or without the prior
10 consent of the other party to apply to the Court at any time for enforcement of compliance with
11 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

12 7.4. Representatives of the Office of the Attorney General shall be permitted to
13 access, inspect and/or copy all business records or documents under control of Defendants
14 solely in order to monitor compliance with this Consent Decree within fourteen (14) days of
15 written request to Defendants, provided that the inspection and copying shall be done in such a
16 way as to avoid disruption of Defendants' business activities. All records accessed, inspected,
17 or copied by the Washington Attorney General's Office shall be kept confidential pursuant to
18 the terms of RCW 19.86.110 and used solely for enforcement of this Consent Decree. Failure
19 to comply with this section will be considered a violation of the terms of this Consent Decree.

20 7.5. Representatives of the Office of the Attorney General may be permitted to
21 question Defendants, or any officer, agent, or employee of any business organization affiliated
22 with Defendants, in the form of a deposition, pursuant to the provisions and notice
23 requirements of CR 30, and to issue interrogatories and requests for production of documents,
24 pursuant to the provisions and notice requirements of CR 33 and CR 34, in order to monitor
25 compliance with this Consent Decree.
26

1 7.6. Nothing in this Consent Decree shall be construed as to limit or bar any other
2 governmental entity or consumer from pursuing other available remedies against Defendants.

3 7.7. Under no circumstances shall this Consent Decree or the name of the State of
4 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
5 employees or representatives be used by Defendants in connection with any selling,
6 advertising, or promotion of products or services, or as an endorsement or approval of
7 Defendants' acts, practices or conduct of business.

8 7.8. This Consent Decree resolves all issues raised by the Attorney General under
9 the Consumer Protection Act pertaining to the acts or omissions addressed in the Complaint
10 filed in this matter.

11 **VIII. DISMISSAL AND WAIVER OF CLAIMS**

12 8.1. Upon entry of this Consent Decree, all claims in this matter not otherwise
13 addressed by this Consent Decree are dismissed.

14 DONE IN OPEN COURT this ____ day of _____, 2008.

15 **APR 30 2008**


16 **D. Bruce Gardiner**

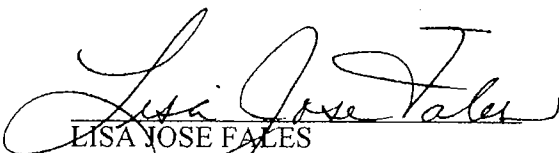
JUDGE/COURT COMMISSIONER

17 Approved for entry and presented by:

Approved for Entry, Notice of
Presentation Waived:

18 ROBERT M. MCKENNA
19 Attorney General

20 
21 PAULA SELIS, WSBA#12823
22 Attorneys for Plaintiff
23 State of Washington

24 
25 LISA JOSE FALES
26 GILEAD I. LIGHT
J. DOUGLAS BALDRIDGE, WSBA# 37247
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575 7th St. NW
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202-344-8300
Attorneys for Defendants