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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

LEANNE VASSALLO and AARON
SMITH,

Defendants.

NO. 09-2-28803-8 SEA

STIPULATED JUDGMENT

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtors: Leanne Vassallo and Aaron Smith
- 1.3 Principal Judgment Amount:
 - a. Restitution: \$14,240.91 (see Section V)
 - b. Costs and Fees: \$24,894.59
 - c. Civil Penalty: \$200,000.00, suspended upon compliance
- 1.4 Post Judgment Interest Rate: 12% per annum, beginning twelve months from the date of Judgment.
- 1.5 Attorney for Judgment Creditor: Paula Selis, Senior Counsel
- 1.6 Attorney for Judgment Debtors: John Doolan

Plaintiff, State of Washington, having filed a Complaint for Injunctive and Other Relief on August 4, 2009; and

1 Defendants having been served with copies of the Complaint herein; and
2 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney
3 General and Paula Selis, Senior Counsel; and
4 Defendants appearing by and through their attorney, John Doolan; and;
5 Plaintiff and Defendants having stipulated and agreed upon a basis for resolving the
6 matters alleged in the Complaint herein and to the entry of this Findings of Fact, Conclusions
7 of Law, Judgment and Decree (hereinafter "Decree") pursuant to CR 54; and

8 The Court having determined that there is no just reason for delay in the entry of a final
9 judgment against Defendants, and being fully advised, the Court hereby makes and enters the
10 following:

11 **II. FINDINGS OF FACT**

12 **2.1** Defendant Leanne Vassallo does business as Frog E-Guides. Defendant
13 Vassallo resides at 17 Maugham Crescent, Wetheril Park, Sydney, New South Wales 2164,
14 Australia.

15 **2.2** Defendant Aaron Smith does business as Frog E-Guides. Defendant Smith
16 resides at 6 Saxon Pl, Cecil Hills, New South Wales 2171, Australia.

17 **2.3** Leanne Vasallo and Aaron Smith (collectively "Defendants"), advertise a
18 variety of health-related products on the Internet, including but not limited to supposed "cures"
19 for shingles, herpes, fibromyalgia, Lyme disease, laryngitis, hives, tuberculosis, colitis,
20 endometriosis, shin splints, sebaceous cysts, multiple sclerosis, genital warts, myasthenia
21 gravis, staph infection, diverticulitis, gastroesophageal reflux (GERD), hemochromatosis,
22 asthma, prostate cancer, and breast cancer. The advertisements for each of the products use a
23 similar format for the advertisement of each "cure." In general, Defendants advertise each of
24 their "cures" on specific websites exclusively devoted to each individual "cure." For example,
25 Defendants advertise on: addisonsdiseasesecure.com; addisonsdiseasediet.com;
26 cellulitedefeated.com; colitiscured.com; cureyourgerd.com; diverticulitiscure.com;

1 endometriosisdefeated.com; endometriosis-nutrition.com; fibromyalgiacured.com;
2 ganglioncystcure.com; genitalherpesdiet.com; genitalherpesgone.com; healgenitalwarts.com;
3 hemochromatosiscure.com; lymediseasediet.com; multiplesclerosisgone.com;
4 myastheniagraviscure.com; refluxrecovery.com; sarcoidosiscure.com;
5 sclerodermadefeated.com; sebaceouscystcure.com; staphinfectioncure.com;
6 tuberculosiscured.com; theprostatecancerdiet.com and thebreastcancerdiet.com.

7 **2.4** The format for all of their website advertisements is a letter testifying to the
8 effectiveness of the “cure” (hereinafter the “testimonial letter”), prefaced by a large-type
9 header designed to capture the reader’s attention. All of Defendants’ headers have a common
10 theme, they all identify a non-professional who has somehow discovered the cure for a
11 particular ailment. Some of the headers use sexual innuendo to grab attention. Examples of
12 such headers include: “Sex Crazed 60 Year Old Reveals a Simple Home Treatment that
13 Eliminates Fibromyalgia in Days;” “60 Year Old Swinger Reveals the Secret To Ending Every
14 Last Myasthenia Gravis Symptom—Using an All Natural Home Treatment...;” “60 Year Old
15 Swinger Reveals a Home Treatment that Makes Ganglion Cysts disappear in Less than 12
16 Hours.” Other headers use a different approach: “39 Year Old Seattle Mom Stumbles Upon a
17 Simple 5 Step Plan That Eliminates Multiple Sclerosis in Weeks;” “36 Year Old Mom
18 Stumbles Upon a 3 Step Exercise and Diet Routine That Eliminates Cellulite in 5 Days;”
19 “Sleep Deprived Mom Reveals a Home Recipe that Kills Head Lice and Their Eggs in 6
20 Minutes Flat;” and “39 Year Old Seattle Mother Stumbles Upon a Simple 5 Step Treatment
21 Diet That Eliminates Colitis in Days.” All of the headers make clear that the product being
22 advertised has proven successful in curing a serious, persistent or irritating health ailment.

23 **2.5** Below the attention-getting headers, Defendants’ advertisements include a
24 picture of the purported “author” of the testimonial letter that forms the body of the
25 advertisement. Many of these pictures contain a caption with the name and address of the
26 pictured individual. The persons pictured are identified by fictitious names and addresses. For

1 example, Defendants' advertisement for the head lice "cure" contains a picture identifying
2 "Sharon Cresler, 320 Elliott Ave., Seattle, WA, USA" as the writer of the testimonial letter.
3 Their advertisement for the endometriosis cure also includes the picture of "Sharon Cresler",
4 but gives her address as "300 Elliott Ave., Seattle, WA USA." Their advertisement for the
5 ganglion cyst cure contains the same picture, but identifies the writer as "Amy Archer, 320
6 Preston Ave., Seattle, WA, USA." The same picture is also used in their myasthenia gravis
7 cure advertisement, but is identified as "Maria Menendez." It is also used in their Addison's
8 disease cure advertisement, similarly identified as "Maria Menendez."

9 **2.6** Defendants have used other fictitious names and pictures in their advertising,
10 including Sarah Shelton, Danny DeAngelo, Susan Spencer, Karen Woodrow, Kerri Clarkson
11 and Marsha Menendez. When they have identified the "addresses" of these fictitious persons,
12 they have all been Seattle, Washington addresses. None of these addresses is actually the
13 address of the person pictured. Accordingly, the addresses are as fictitious as the persons
14 pictured.

15 **2.7** The body of Defendants' advertising contains a testimonial letter, generally
16 addressed to "Dear Friend." Though there are a few differences in their letters depending on
17 the subject of the "cure," they contain numerous similarities. They all purport to tell the
18 "story" of a "fiery 60 year old" who revealed to the writer of the testimonial letter a "secret 5
19 step plan" to cure the symptoms of the ailment. The supposed writer goes on to state that by
20 using this "plan," he or she has essentially been cured. After a description of years of suffering
21 from the symptoms of the ailment, the writer describes either a "girls night out" or a "bachelor
22 party" (depending on the gender of the fictional person writing the testimonial) where a "60
23 year old swinger" revealed a "secret weapon" that included a "simple 5 step plan" to cure the
24 ailment. The writer allegedly employs the "plan" and cures his or her ailment. In an effort to
25 let "other sufferers" know about this "great plan," the writer claims that he or she, after
26 consultation with the "swinger," has decided to share the information via the Internet. The

1 information is included in a downloadable report that is entitled according to the ailment, i.e.
2 "The Myasthenia Gravis Cure;" "Fibromyalgia Cured;" "The Addison's Disease Cure;" "The
3 Colitis Cure Report," etc. The report is downloadable by the computer user once he or she has
4 paid \$24.47 or \$16.97, depending on the product sold. The purchase is made via credit card.

5 **2.8** In additional to the testimonial letter, the purported writer of the letter attaches
6 "emails" from others "all over the world" who have successfully used the "cure" and achieved
7 "great results." These "emails" are essentially the same, from advertisement to advertisement
8 and from ailment to ailment. For example, an "email" from "Susan Hodges" of Dallas, Texas,
9 is always included as the first in a series of "emails," praising the "cure" and claiming its
10 success, no matter whether the ailment featured is multiple sclerosis, fibromyalgia or
11 endometriosis. The name of "Susan Hodges" is featured in all of the advertisements, always
12 as the first in claiming that her condition has greatly improved or been healed. Additional
13 fictitious "emails" follow the one purportedly from Hodges, including ones from "Naomi
14 Graer" of Chicago, Illinois; "Jason Everett" of Melbourne, Australia; "Barbara Dressinger" of
15 Atlanta, Georgia and "Craig Belamy" of Ontario, Canada. All of these "emails" claim that
16 their use of the "cure" has been successful.

17 **2.9** Washington consumers have purchased Defendants' downloadable reports for
18 the various "cures."

19 **2.10** Defendants are in competition with others in the State of Washington engaged
20 in similar business.

21 **2.11** In the context of conducting their business, Defendants make numerous
22 misrepresentations, including, but not limited to, the following:

- 23 a. The misrepresentation that the testimonial letter is written by a consumer who
24 has used the "cure" successfully, when in fact it has been written by a
25 commercial seller;
- 26 b. The misrepresentation that the "cure" is effective;

- 1 c. The existence of “weird” and “strange” physical “symptoms” the writer of the
2 consumer testimonial letter experienced prior to discovering the “cure,” and the
3 “depression” attendant to those “symptoms;”
- 4 d. The misrepresentation regarding the meeting with the “60 year old swinger”
5 who introduced the writer to the “secret weapon” of the “cure;”
- 6 e. The misrepresentation that unsolicited emails have been received from satisfied
7 consumers from “all over the world” who have used the “cure” successfully;
- 8 f. The misrepresentation that the names of the purportedly satisfied customers are
9 actual, real persons;
- 10 g. The various misrepresentations allegedly supporting the effectiveness of the
11 “cures,” including but not limited to the following representative
12 misrepresentations:
- 13 1. That the “cure” is a “5-step home remedy that heals your immune
14 system” (myasthenia gravis website);
 - 15 2. That the “cure” restores your eye muscles and puts an end to
16 breathing difficulties” (myasthenia gravis website);
 - 17 3. That according to the person touting the “cure,” “4 weeks later I felt
18 absolutely amazing...I was 40 again...no more muscle fatigue, no
19 more facial muscle weakness, my eye was back to full function”
20 (myasthenia gravis website);
 - 21 4. That by using the “cure” one can “correct your breathing—breath
22 deeply and freely again” (myasthenia gravis website);
 - 23 5. That the “cure” contains “an element taken orally that can single-
24 handedly reduce your myasthenia gravis symptoms by 70%;”
25 (myasthenia gravis website);
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6. That the “cure” contains “2 secret immune boosting techniques that will ensure your myasthenia condition gets stopped in its tracks;” (myasthenia gravis website);
7. That according to the person touting the “cure,” “Since I have made the ...cure available from this website, I have received 137 emails from women all over the world who have used (the) ...cure to achieve great results;” (various advertisements);
8. That according to the person touting the “cure,” “...lo and behold...five days later I felt absolutely amazing...I was 21 again...no more diarrhea, no more low energy, no more sleepless nights, no more aching cramps...no more endometriosis!” (endometriosis website);
9. That the “cure consists of “a drinkable remedy that will ensure that you have the energy of a 21 year old,” (endometriosis website);
10. That by using the “cure,” you can “find out what you have to do to avoid scary, invasive surgery,” (endometriosis website);
11. That the “cure consists of “a drinkable remedy that will detoxify your body and cleanse your blood - this is essential to getting rid of the herpes internally as well as externally;” (herpes website);
12. That the “cure” consists of a “5 step plan, using groceries from the local Wal-Mart and a few items from the health food store...That cures colitis in days!” (colitis website);
13. That the “cure” is “a great colitis remedy to boost your immune system through the roof. Preventing any future colitis infection...” (colitis website);

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- 14. That the “cure” is a “5 Step treatment that eliminates tuberculosis in days” (tuberculosis website);
- 15. That according to the person touting the “cure,” “...two weeks later I felt absolutely amazing... I was 21 again... no more coughing, no more chest pain, no more bloody phlegm, no more fatigue... no more tuberculosis basically!!” (tuberculosis website);
- 16. That according to the person touting the “cure,” “...two weeks later I felt absolutely amazing... 80% of my symptoms had completely gone... I could walk properly, I had no muscle or joint problems... Best of all - when I told my foot to move - IT MOVED!!! (multiple sclerosis website);
- 17. That according to the person touting the “cure,” Defendants’ “simple diet and exercise plan...took me from rolling around on the floor in agony to being in total remission from Prostate Cancer for the last 3 years...” (prostate cancer website); and
- 18. That according to the person touting the “cure,” Defendants’ “simple diet and exercise plan...took me from facing death from Breast Cancer to being in total remission from Breast Cancer for the last 3 years...” (breast cancer website).

2.12 Defendants advertise and sell alleged “cures” for a variety of ailments without providing substantiation that these “cures” actually work. Consumer testimonials are the only “substantiation” that is proffered in their advertising. These testimonials are legally insufficient to prove the effectiveness of the “cures.” Evidence of consumer satisfaction is not relevant to determining whether competent and reliable evidence existed for claims of product effectiveness. Defendants’ unsubstantiated claims include, but are not limited to the following:

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- a. The claim that the myasthenia gravis “cure” is a “5-step home remedy that heals your immune system;”
- b. The claim that the myasthenia gravis “cure” “restores your eye muscles and puts an end to breathing difficulties;”
- c. The claim that by using the myasthenia gravis “cure”, within 4 weeks one will feel “absolutely amazing... 40 again...no more muscle fatigue, no more facial muscle weakness, ... back to full function;”
- d. The claim that the myasthenia gravis “cure” will “correct your breathing—breath deeply and freely again;”
- e. The claim that the myasthenia gravis “cure” includes “an element taken orally that can single-handedly reduce your myasthenia gravis symptoms by 70%;”
- f. The claim that the myasthenia gravis “cure” includes “2 secret immune boosting techniques that will ensure your myasthenia condition gets stopped in its tracks;”
- g. The claim that after using the endometriosis “cure,” after five days one will feel “absolutely amazing... 21 again...no more diarrhea, no more low energy, no more sleepless nights, no more aching cramps...no more endometriosis!;”
- h. The claim that the endometriosis “cure” includes “a drinkable remedy that will ensure that you have the energy of a 21 year old;”
- i. The claim that by using the endometriosis “cure” one can “avoid scary, invasive surgery;”
- j. The claim that the herpes “cure” is “a drinkable remedy that will detoxify your body and cleanse your blood - this is essential to getting rid of the herpes internally as well as externally;”

- 1 k. The claim that the colitis “cure” is “a simple 4 step plan, using groceries
2 from the local Wal-Mart and a few items from the health food
3 store... That cures colitis in days!;”
- 4 l. The claim that the colitis cure is “a great colitis remedy to boost your
5 immune system through the roof. Preventing any future colitis
6 infection...;”
- 7 m. The claim that the tuberculosis cure is a “5 Step treatment that
8 eliminates tuberculosis in days;”
- 9 n. The claim that the tuberculosis cure will result in feeling “amazing”
10 after “two weeks”, that the user will experience “no more coughing, no
11 more chest pain, no more bloody phlegm, no more fatigue... no more
12 tuberculosis basically!!;”
- 13 o. The claim that the multiple sclerosis “cure” will result in feeling
14 “absolutely amazing” after two weeks, with “80% of ...symptoms...
15 completely gone...”
- 16 p. The claim that the plan recommended by Defendants will “shrink ...
17 breast cancer into non-existence!!” and
- 18 q. The claim that the plan recommended by Defendants can “heal...
19 prostate cancer from the inside out.”

20 **III. CONCLUSIONS OF LAW**

21 **3.1** The Court has jurisdiction of the subject matter of this action and of the parties
22 hereto, and Plaintiff’s Complaint states claims upon which relief may be granted.

23 **3.2** The Attorney General has jurisdiction to bring this action under
24 RCW 19.86.080 and RCW 19.86.040.

25 **3.3** Defendants’ conduct as described in Findings of Fact Nos. 2.3 through 2.12
26 constitute violations of the Consumer Protection Act, RCW 19.86.

1 **3.4** Plaintiff is entitled to a Decree ordering Defendants to pay a civil penalty
2 pursuant to RCW 19.86.140.

3 **3.5** Plaintiff is entitled to a Decree ordering Defendants to pay restitution to
4 consumers pursuant to RCW 19.86.080.

5 **3.6** Plaintiff is entitled to a Decree binding upon Defendants and their successors,
6 officers, employees, agents, servants, transferees, directors, and all persons in active concert
7 or participation with Defendants permanently enjoining Defendants from engaging in the
8 practices described in Findings of Fact 2.3 through 2.12 and requiring Defendants to comply
9 with the injunctive relief outlined below.

10 **3.7** Plaintiff is entitled to a Decree ordering Defendants to pay Plaintiff's costs and
11 fees incurred in the prosecution of this action pursuant to RCW 19.86.080.

12 **3.8** The fees and costs incurred by Plaintiff in the prosecution of this action are
13 reasonable.

14 The Court having made the foregoing Finding of Fact and Conclusions of Law,
15 and in accordance therewith, the Court enters the following:

16 **IV. JUDGMENT AND DECREE**

17 NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED
18 as follows:

19 **4.1** Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay
20 the costs and reasonable attorneys' fees incurred by Plaintiff in pursuing this matter in the
21 amount of \$24,894.59.

22 **4.2** Pursuant to RCW 19.86.140, Plaintiff shall recover and Defendants shall pay a
23 civil penalty of \$200,000.00 provided that \$200,000.00 is suspended conditioned on
24 compliance with the provisions of this Stipulated Judgment.

25 **4.3** Pursuant to RCW 19.86.080, Defendants shall provide payment for consumer
26 restitution in the amount of \$14,240.91.

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1 **4.4** Defendants and their successors, assigns, transferees, officers, agents, servants,
2 directors, employees, and all other person or entities in active concert or participation with
3 Defendants shall be informed of the terms and conditions of this Order.

4 **4.5** Defendants and their successors, assigns, transferees, officers, agents, servants,
5 directors, employees, and all other persons or entities in active concert or participation with
6 Defendants are hereby enjoined and restrained from engaging in the following acts and
7 practices in connection with any Internet-related businesses:

- 8 a. Engaging in the practices described in Findings of Fact Nos. 2.3 through 2.12;
- 9 b. Making unsubstantiated claims about products or services they sell, market,
10 deliver, advertise or offer, including but not limited to claims relating to
11 efficacy. For purposes of this injunction, a claim shall be considered
12 unsubstantiated unless Defendants have in their possession, prior to the time
13 the claim is made, two well-controlled, scientifically-accepted, clinical tests
14 which provide a reasonable basis for their efficacy claims;
- 15 c. Making misrepresentations about products or services they sell, market,
16 deliver, advertise or offer, including but not limited to claims relating to
17 efficacy, the identity of the seller, the identity of prior purchasers, the
18 circumstances underlying the advertisement of the produce or service, the
19 identity of the persons testifying to the use of the product or service, or the
20 satisfaction of any persons who have used the product;
- 21 d. Making false pictorial representations about products or services they sell,
22 market, deliver, advertise or offer;
- 23 e. Utilizing deceptive testimonials in their sale, marketing, delivery, advertising,
24 or offering of products or services;
- 25 f. Using any term that implies or represents that a product or service is able to
26 “cure” a health condition, when in fact, it does not; and

1 g. Advertising, marketing or selling any health-related products via the Internet to
2 Washington consumers.

3 **V. RESTITUTION**

4 **5.1** Pursuant to RCW 19.86.080, payment for consumer restitution shall be made
5 as follows:

6 a. Payment received pursuant to Paragraph 6.1 below shall be applied by Plaintiff
7 as follows: Those consumers whose purchases were made through the
8 payment processor ClickBank shall be identified to Clickbank. Plaintiff shall
9 provide payment to ClickBank in an amount equal to the amounts spent by
10 those consumers, and ClickBank shall, in turn, provide credit to those
11 consumers for the amounts.

12 b. Payment received pursuant to Paragraph 6.1 below shall also be applied by
13 Plaintiff as follows: Those consumers whose purchases were made through the
14 payment processor PayPal shall be identified to PayPal. Plaintiff shall provide
15 payment to PayPal in an amount equal to the amounts spent by those
16 consumers, and PayPal shall, in turn, provide credit to those consumers for the
17 amounts.

18 **VI. TERMS OF PAYMENT**

19 **6.1** Within twenty-eight (28) days of entry of this Judgment, payment of \$39,135.50
20 shall be made pursuant to Paragraphs 4.1 and 4.3 of this Stipulated Judgment, in the form of a
21 valid check paid to the order of the "Attorney General—State of Washington." Payment shall
22 be sent to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative
23 Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington 98104-3188.

24 **6.2** In any successful action to enforce any part of this Stipulated Judgment,
25 Defendants will pay the Attorney General its attorney's fees and costs, including reasonable
26 attorney's fees as provided by RCW 19.86.080.

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1 **VII. ENFORCEMENT**

2 **7.1** Violation of any of the injunctions contained in this Stipulated Judgment, as
3 determined by the Court, shall subject the Defendants to a civil penalty of up to \$25,000.00 per
4 violation pursuant to RCW 19.86.140.

5 **7.2** Violation of any of the terms of this Stipulated Judgment, as determined by the
6 Court, shall constitute a violation of the Consumer Protection Act, RCW 19.86.020.

7 **7.3** This Stipulated Judgment is entered pursuant to RCW 19.86.080. Jurisdiction is
8 retained for the purpose of enabling any party to this Stipulated Judgment with or without the
9 prior consent of the other party to apply to the Court at any time for enforcement of compliance
10 with this Stipulated Judgment, to punish violations thereof, or to modify or clarify this Stipulated
11 Judgment.

12 **7.4** Representatives of the Office of the Attorney General shall be permitted to
13 access, inspect and/or copy business records or documents under control of Defendants in
14 order to monitor compliance with this Stipulated Judgment, pursuant to the Civil Rules,
15 provided that the inspection and copying shall be done in such a way as to avoid disruption of
16 Defendants' business activities.

17 **7.5** Representatives of the Office of the Attorney General may be permitted to
18 question Defendants, or any officer, director, agent, or employee of any corporation affiliated
19 with Defendants, in deposition, pursuant to the provisions and notice requirements of CR 30, in
20 order to monitor compliance with this Stipulated Judgment.

21 **7.6** Under no circumstances shall this Stipulated Judgment or the names of the
22 state of Washington or the Office of the Attorney General, Consumer Protection Division, or
23 any of its employees or representatives be used by Defendants' agents or employees in
24 connection with the promotion of any product or service or an endorsement or approval of
25 Defendants' practices.
26

1 7.7 Nothing in this Stipulated Judgment shall be construed as to limit or bar any other
2 governmental entity or consumer from pursuing other available remedies against Defendants.

3 DONE in Open Court this _____ day of _____, 2010.

~~MAR 08 2010~~

4
5 **CARLOS Y. VELATEGUI**

6 JUDGE/COURT COMMISSIONER

7
8 Presented By:

9 ROBERT M. MCKENNA
10 Attorney General

11 Paula Selis

12 PAULA L. SELIS, WSBA #12823
13 Senior Counsel
14 Attorney for Plaintiff
15 State of Washington

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

16 John Doolan

17 JOHN DOOLAN
18 Attorney for Defendants

19 Leanne Vassallo

20 LEANNE VASSALLO, Defendant

21 Aaron Smith

22 AARON SMITH, Defendant