

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

OFFICE OF THE ATTORNEY GENERAL,  
STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No. 02-8630  
Division C

CONTEST AMERICA PUBLISHERS,  
INC., a Nevada corporation;  
OPPORTUNITIES UNLIMITED  
PUBLICATIONS, INC., a Missouri  
corporation, d/b/a NORTH AMERICAN  
AWARDS CENTER,

Defendants.

\_\_\_\_\_ /

**MOTION TO REOPEN CASE FOR PURPOSE OF ENFORCING CONSENT  
JUDGMENT AND TO ORDER THAT DEFENDANTS BE HELD IN CIVIL  
CONTEMPT UNTIL THEY STOP VIOLATING CONSENT JUDGMENT**

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS, (“State of Florida”) hereby requests that the Court: (1)  
reopen this case so that it may enforce a consent judgment entered in 2002 between the parties to  
this case; and (2) order that Defendants be held in civil contempt until they stop violating the  
consent judgment.

**INTRODUCTION**

Every day, Florida consumers, many of them elderly, receive direct mail marketing from  
Defendants in the form of contest promotion solicitations inviting them to pay for the  
opportunity to enter into skill contests for the chance to win cash awards of thousands of dollars.  
The mailers lure the consumers by conveying a sense of urgency on official-looking and

personalized simulated checks and other simulated legal documents and financial instruments. Moreover, the mailers misrepresent that the particular consumer receiving the mailer has an edge over other consumers entering these contests. Not only are these mailers in violation of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, but they are in violation of the terms of the parties' 2002 Final Consent Judgment Against Defendants ("Consent Judgment") entered by this Court and subject to enforcement by this Court pursuant to Florida jurisprudence and the terms of the Consent Judgment itself. *See Exhibit A*, Final Consent Judgment Against Defendants (dated September 23, 2002).

### **BACKGROUND**

On September 17, 2002, the State of Florida filed this lawsuit alleging that Defendants, in marketing their "games of skill," misrepresent, directly and by implication, that consumers have won a prize, the nature of the contest, the prerequisites to winning a prize, the degree of skill necessary to successfully compete for a prize, and the likelihood or the fact of winning a prize. *See Exhibit B*, Complaint, ¶¶ 19-23. Further, the State of Florida alleged that Defendants failed to clearly and conspicuously disclose other necessary facts, including, but not limited to, the number of rounds of puzzles that must be completed to win and the amount of time it will take to complete the "games of skill." *Id.* at ¶ 24.

Simultaneous with the State of Florida filing the Complaint, the parties submitted to the Court a Stipulation to Entry of Final Judgment. *See Exhibit C*, Stipulation to Entry of Final Judgment. The Court thereafter entered the Consent Judgment. *See Exhibit A*, Final Consent Judgment Against Defendants.

## CONSENT JUDGMENT AGAINST DEFENDANTS

The Consent Judgment Against Defendants specifies how Defendants were to revise their materials and practices with regard to Florida consumers so that Defendants and their “successors, assigns, transferees, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or participation with Defendants” could comply with Florida’s consumer protection laws.

Specifically, the Consent Judgment proscribes for Defendants certain required representations and disclosures while prohibiting certain misrepresentations and business practices. *See Id.* at pp. 6 to 23. By way of example, the Consent Judgment prohibits Defendants from:

- (1) using a personalized simulated check or other payment device to represent any contest prize (*Id.* at p. 7, ¶ 4);
- (2) representing that its employees, real or fictitious, have personal feelings concerning the recipient of the contest solicitation (*Id.* at p. 7, ¶ 7);
- (3) misrepresenting that a consumer has an advantage over other contestants (*Id.* at p. 7-8, ¶ 8);
- (4) misrepresenting, on the outside of the envelope, the method of delivery of the communication, including misrepresenting that the delivery is being made by special delivery or any other form of expedited delivery or otherwise misrepresenting the urgency with which the envelope was sent (*Id.* at p. 8, ¶ 9);
- (5) using stamps, labels, bar codes, or other elements which resemble forms used by an entity such as the United States Postal Service, a government agency or a financial institution unless the element is genuine (*Id.* at p. 8, ¶ 10);

- (6) using any writing that simulates or resembles a legal document such as an affidavit, certification, release or legal notice (*Id.* at p. 10, ¶ 20);
- (7) representing that a deadline applies to the return of an entry form other than the date by which all entries must be received (although Defendants may make general requests for prompt responses that do not specify any deadlines) (*Id.* at p. 11, ¶ 26);  
and
- (8) representing that their solicitations, practices, goods or services have the sponsorship or approval of any Court or the Attorney General of any State or any other judicial or governmental authority unless expressly authorized by such authority (*Id.* at p. 18, ¶ 37).

Further, the Consent Judgment requires that certain specific and mandatory disclosures be included in all future communications to consumers. These mandatory disclosures include specific language that must be included on a separate insert titled “Official Contest Rules, Contest Facts, and Refund Policy.” *Id.* at p. 18-22.

### **DEFENDANTS’ VIOLATIONS OF CONSENT JUDGMENT**

The State of Florida has evidence that the Defendants are blatantly violating the terms of the Consent Judgment, and has attached five examples of Defendants’ violations to this Motion.

#### **A. Example One – Opportunities Unlimited Publications, Inc., d/b/a North American Award Center Solicitation to Florida Consumer Maddock**

On August 29, 2014, Defendant Opportunities Unlimited Publications, Inc. d/b/a North American Awards Center mailed a skill contest solicitation to Florida consumer Isabelle Maddock, an 83-year-old retiree. *See Exhibit D*, Affidavit of Florida consumer Isabelle Maddock with Example One attached. The solicitation is in violation of numerous provisions of the Consent Judgment. By way of example, Defendant’s outer envelope misrepresents the

urgency with which the envelope was sent (in violation of Consent Judgment at p. 8, ¶ 9) and that the contents have the approval of a purported government authority “Audit Bureau” (in violation of Consent Judgment at p. 18, ¶ 37).

The solicitation itself resembles a legal document (in violation of Consent Judgment at p. 10, ¶ 20). Additionally, throughout the solicitation, Defendant misrepresents that Ms. Maddock has an advantage over other contestants through referencing that her eligibility was “verified – recorded by judges in attendance” and repeated references to her “nomination” plus a stamp that she has been “approved” and a “preferred customer” discount applied to her entry fee. Moreover, the solicitation repeatedly represents that Ms. Maddock’s response is due within seven days of receipt even though the deadline for submitting an entry form is not until March 15, 2015 (in violation of the Consent Judgment at p. 11, ¶ 26).

**B. Example Two – Opportunities Unlimited Publications, Inc., Solicitation to Florida Consumer Maddock**

Earlier this year, in April 2014, Defendant Opportunities Unlimited Publications, Inc., mailed Florida consumer Isabelle Maddock a different skill contest solicitation than the August 2014 solicitation. *See Exhibit E*, Affidavit of Florida consumer Isabelle Maddock with Example Two attached. The April 2014 solicitation is printed on an official-looking certificate with currency-like borders in violation of the Consent Judgment at p. 10, ¶ 20. Notably, the first page of the solicitation is labeled a “Declaration of Decision” referencing a “Motion of Nomination” that is “Authorized by” two “judges” whose signatures purportedly appear on the upper right corner – all in violation of the Consent Judgment at p. 10, ¶ 20 and p. 18, ¶ 37.

The April 2014 solicitation also misrepresents that Ms. Maddock has an advantage over other contestants by representing that the entry form has been “typed out especially for” her and repeatedly referring to her as “nominated” and “confirmed” as a candidate for the contest – all in

violation of the Consent Judgment at p. 7-8, ¶ 8. Also, the solicitation improperly indicates that the “Prize Director is concerned” and that the sender “would love to announce” that Ms. Maddock is the winner – all in violation of the Consent Judgment at p. 7, ¶ 7.

**C. Examples Three and Four – “International Award Payment Center” Solicitations to Florida Consumers Leto and Hardy**

International Awards Payment Center is a fictitious name for Defendant Opportunities Unlimited Publications, Inc. *See Exhibit F*, Affidavit of Financial Investigator Robert Mahlburg. Thus, solicitations being sent by “International Awards Payment Center” are actually being sent by Defendant Opportunities Unlimited Publications, Inc. *Id.* On March 6, 2014, Defendant Opportunities Unlimited Publications, Inc., mailed a skill contest solicitation to 66-year-old Florida consumer Frank Leto. *See Exhibit G*, Affidavit of Florida consumer Frank Leto with Example Three attached. That skill contest solicitation was virtually identical to a solicitation that Defendant Opportunities Unlimited Publications, Inc., mailed to Florida consumer Edward Hardy, an 80-year-old retiree, on February 8, 2013. *See Exhibit H*, Affidavit of Florida consumer Edward Hardy with Example Four attached.

These solicitations violate the Consent Judgment not only by using elements that resemble government agencies (the seal, the references to Form 1080, and the Blue Series XI stamp – all in violation of the Consent Judgment at p. 10, ¶ 20 and p. 18 ¶ 37), but also by using a personalized simulated check in clear violation of the Consent Judgment at p. 7, ¶ 4. Also, the envelope for the solicitation Mr. Leto received violates the Consent Judgment by falsely indicating that the delivery of the solicitation was by expedited delivery by labeling the envelope with a large “Direct Dispatch” label (in violation of the Consent Judgment at p. 8, ¶ 9).

**D. Example Five – Contest America Publishers, Inc., Solicitation to Florida Consumer Goldberg**

On January 26, 2012, Defendant Contest America Publishers mailed 65-year-old Florida consumer Mark Goldberg a follow-up solicitation concerning an entry he had already submitted for a skill contest in response to a “Letter of Nomination.” *See Exhibit I*, Affidavit of Florida consumer Mark Goldberg with Example Five attached. The envelope enclosing the follow-up solicitation plainly violates the Consent Judgment as it contains a bar code and design that misrepresents the manner in which the follow-up solicitation was delivered (in violation of p. 8, ¶ 9). Also, in the follow-up solicitation, Defendant Contest America Publishers says that the notice is “time-sensitive,” requests that Mr. Goldberg respond within seven days of receipt, and states that failing to return the registration fee by the “posted deadline” could disqualify Mr. Goldberg. These statements are in violation of the Consent Judgment at p. 11, ¶ 26 because, according to the fine print in the “rules” insert, the deadline to submit an entry was June 30, 2012 – five months after this follow-up solicitation was mailed to Mr. Goldberg.

As these five examples demonstrate, Defendants Contest America Publishers, Inc., and Opportunities Unlimited Publications, Inc., have been and are continuing to violate the Consent Judgment.

**REQUEST TO REOPEN CASE FOR ENFORCEMENT OF CONSENT JUDGMENT**

The State of Florida now moves the Court for an order reopening this case for the purpose of enforcing the Consent Judgment. A consent judgment, although a judicially approved contract, has the same effect of any other judgment issued by a state court. *Arrieta-Gimenez v. Arrieta-Negron*, 551 So. 2d 1184, 1186 (Fla. 1989).

Here, the Consent Judgment specifically states that this Court has retained jurisdiction “for the purpose of enabling any party to this Consent Judgment . . . to apply to the Court at any

time for enforcement of compliance with this Consent Judgment, to punish violations thereof, or to modify or clarify this Consent Decree.” *See Exhibit A, Final Consent Judgment Against Defendants*, p. 24 ¶ 7.2. Even without this express reservation of jurisdiction, however, “jurisdiction inherently remains in the trial court to make such orders as may be necessary to enforce its judgment.” *Buckley Towers Condominium, Inc. v. Buchwald*, 321 So. 2d 628, 629 (Fla. 3d DCA 1975).

As shown above, Defendants are blatantly violating many of the provisions in the Consent Judgment. Further, it is quite possible that Defendants are surreptitiously violating many other provisions – the violation of which is not readily apparent simply by looking at the unlawful solicitations that Defendants are sending Florida consumers. For example, the Consent Judgment prohibits Defendants from communicating to consumers that consumers are being notified for a second or subsequent time or a “final” time unless that is true. *Id.* at p. 10, ¶¶ 21-22. Further, Defendants are prohibited from sharing consumer information with other parties. *Id.* at p.12-13, ¶ 28, 30-31. Additionally, Defendants are prohibited from sending communications to certain “at-risk” consumers. *Id.* at p. 13-14, ¶ 33.

The State of Florida will need to conduct targeted, expedited discovery to determine whether Defendants are also violating these and other similar provisions. Thus, the State of Florida requests that the Court reopen the case and permit the State to conduct this targeted discovery under an expedited timeframe to determine the extent to which Defendants are violating the terms of the Consent Judgment in addition to the clear violations already demonstrated by the non-complying communications being sent to Florida consumers.



**REQUEST TO ORDER DEFENDANTS TO BE HELD IN CONTEMPT  
UNTIL THEY STOP VIOLATING THE CONSENT JUDGMENT**

As set out above, at a minimum, Defendants' communications to Florida consumers (examples of which are attached as Exhibits D, E, G, H and I to this Motion) violate the Consent Judgment. Accordingly, the State of Florida seeks civil contempt sanctions against Defendants, including coercive monetary relief, to force Defendants to comply with the Consent Judgment.

"It has long been recognized that courts have the authority to enforce a judgment by the exercise of their contempt powers." *Parisi v. Broward County*, 769 So. 2d 359, 363 (Fla. 2000) (quoting *Johnson v. Bednar*, 573 So. 2d 822, 824 (Fla. 1991)). Indeed, "[i]f a party can make oneself a judge of the validity of orders issued by trial courts, and by one's own act of disobedience set them aside, then our courts are devoid of power, and the judicial power, both federal and state, would be a mockery." *Parisi*, 769 So. 2d at 363 (quoting *Johnson*, 573 So. 2d at 822).

There are two categories of contempt available to the Court – civil contempt and criminal contempt. *Sauriol v. Sauriol*, 79 So. 3d 204, 206 (Fla. 2d DCA 2012). "Civil contempt sanctions are further categorized as either compensatory or coercive." *Id.* Here, the State of Florida is requesting that the Court exercise its coercive civil contempt powers. "[C]ivil contempt may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required." *Parisi*, 769 So. 2d at 365. There is a "broad arsenal of coercive contempt sanctions available" ranging from incarceration to additional fines, but a valid civil contempt order must also include a purge provision. *Id.*

Here, as a coercive civil contempt sanction, the State of Florida seeks daily fines that will cease to accrue when Defendants purge themselves of the contempt. *Id.* ("An example of a valid

coercive fine is a per diem fine imposed each day the contemnor fails to comply with the court's order, but when the contemnor complies with the underlying order, the requirement to pay the additional fines will be purged."'). Regarding the amount of the fine, the State of Florida recognizes that the Court must use its discretion to determine an appropriate daily fine after considering: (1) "the character and magnitude of the harm threatened by the continued contumacy;" (2) "the probable effectiveness of any suggested sanction in bringing about the result desired;" and (3) the Defendants' "financial resources and the consequent seriousness of the burden to that particular defendant." *Id.* at 366.

Here, Defendants' extensive and blatant violations of the Consent Judgment raise serious concerns about Defendants' respect for the power of the Court's orders. Accordingly, the State of Florida requests that the Court require Defendants, jointly and severally, to pay the State a coercive civil contempt sanction until Defendants comply with the Consent Judgment.

Defendants, as business entities, are presumably motivated by economic considerations and so the coercive civil contempt sanction should be hefty enough to bring about quick compliance with the Consent Judgment.

WHEREFORE, Plaintiff State of Florida respectfully requests that this Court enter an order reopening this case for purposes of enforcing the Consent Judgment, permitting expedited discovery, and holding Defendants in civil contempt with coercive civil contempt sanctions until Defendants comply with the Consent Judgment.

Dated: November 25, 2014

Respectfully Submitted,

Office of the Attorney General  
The State of Florida,  
Department of Legal Affairs

Pamela Jo Bondi  
Attorney General

**s/ Amanda Arnold Sansone**

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**CERTIFICATE OF SERVICE**

I CERTIFY that, on this 25th day of November, 2014, a copy of the foregoing was served  
via U.S. mail on the following counsel for Defendants:

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