

STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTER OF:
TRILEGIANT CORPORATION

AG Case # L01-3-1484

STIPULATED SETTLEMENT AGREEMENT

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes, the OFFICE OF THE ATTORNEY GENERAL, hereinafter referred to as the “DEPARTMENT,” caused an inquiry to be made into the advertising and business practices of Trilegiant Corporation, which is a foreign corporation hereinafter referred to as “TC” and defined in Section C.15 of this Stipulated Settlement Agreement hereinafter referred to as the “Agreement.”

A. Witnesseth

WHEREAS, the DEPARTMENT, pursuant to its statutory authority, caused an investigation to be made into the business practices of TC concerning TC’s advertising, marketing and sale of Membership Programs to Consumers, as hereinafter defined;

WHEREAS, TC denies any liability or violation of law and by entering into this Agreement makes no admission of any kind, in law or fact;

WHEREAS, the DEPARTMENT and TC desire to conclude the investigation and reach an agreement that will fully and finally resolve the matters investigated concerning TC and any and all claims by the DEPARTMENT against TC relating thereto;

WHEREAS, the DEPARTMENT, by and through the Attorney General and the undersigned Assistant Attorney General, agrees to accept this Agreement in termination

of the investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the DEPARTMENT by said statute.

NOW THEREFORE, in consideration of the obligations contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the DEPARTMENT and TC agree to the following:

B. Stipulated Facts

The parties, through their respective attorneys, make the following stipulations:

1. TC is a Delaware corporation with its corporate offices located at 100 Connecticut Avenue, Norwalk, CT 06850.
2. This Agreement is made without trial or adjudication of fact or law and is being entered into for the sole purpose of resolving disputed claims without the necessity for protracted and expensive litigation. This Agreement does not constitute evidence or an admission of any issues of fact by TC or of any violation by TC of any provision of Florida law, including but not limited to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (“FDUTPA”).
3. This Agreement constitutes the full and final resolution between the DEPARTMENT and TC, its employees, future successors, assigns and directors of all civil claims relating to TC’s marketing to Florida residents that are the subject matter of this Agreement or that could have been included within the subject matter of this Agreement up to and including the Effective Date of this Agreement.
4. The corporate signatory hereto is an officer of TC, is authorized to sign this Agreement on behalf of TC, and has read the Agreement and agrees to entry of same on behalf of TC.

5. The DEPARTMENT has jurisdiction in this matter under the FDUTPA.
6. This Agreement is subject to the provisions of § 501.207 of FDUTPA.

C. Definitions

For purposes of this Agreement, the following definitions shall apply:

1. “Account” shall mean a credit card, debit card, checking account, savings account, loan account, telephone service account, or similar account.
2. “Authorized User” shall mean the holder of an Account or a person legally authorized to make charges to an Account.
3. “Billing Information” shall mean any data that provides the means for TC to charge a Consumer directly, or allows TC to place, or cause to be placed, a charge on a Consumer’s Account, or to withdraw funds from any Consumer’s Account.
4. “Client” shall mean an entity that provides information to TC that allows Authorized Users to be Marketed by TC to enroll in a Membership Program or accept a Trial Offer.
5. “Clearly and Conspicuously” shall mean that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable and readable. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in a manner that is readily noticeable and readable, and it must not be obscured in any manner. An audio disclosure shall be delivered in a volume and cadence sufficient for a Consumer to hear it. In a print advertisement or promotional material directed to Consumers, the disclosure shall be in a type size and location sufficiently noticeable for a Consumer to read and notice it, in print that contrasts with the background against which it appears.

6. “Consumer” shall mean an individual residing in the state of Florida who is Marketed by TC to join or accept membership or a trial membership in a TC Program.

7. “Eligible Member” shall mean a Member who has not used the benefits of the Membership Program in which he or she is enrolled and who: (i) has made an Unauthorized Membership Charge Complaint to TC and such complaint was produced to the DEPARTMENT by TC in response to an investigative subpoena served upon TC by the DEPARTMENT in connection with the DEPARTMENT’s investigation bearing AG Case No. L01-3-1484; (ii) has made an Unauthorized Membership Charge Complaint to the DEPARTMENT and such complaint was forwarded to TC at anytime during the DEPARTMENT’s investigation of TC that commenced in April 2001 and concluded upon the Execution Date of this Agreement; or (iii) makes an Unauthorized Membership Charge Complaint to the DEPARTMENT within six months after the Execution Date of this Agreement.

8. “Execution Date” shall mean the date this Agreement is fully executed by all parties.

9. “Express Affirmative Consent” shall mean that a Consumer must perform some affirmative act to evidence clearly and unambiguously the Consumer’s informed acceptance after a description of all material terms and conditions including the Membership Charge and the renewal terms associated with the Membership Program.

10. “Marketed or Marketing by TC” shall mean any Membership Program directly marketed by TC or its agents.

11. “Member” shall mean a Consumer who is enrolled in a Membership Program.

12. "Membership Charge" shall mean an amount charged to any Account of an Authorized User to join or to renew a membership in a Membership Program, but shall not include any fee connected with a Trial Offer.

13. "Membership Program" or "TC Program" shall mean any program offered by TC to a Consumer that is Marketed by TC offering benefits or advantages to the Consumer by becoming a Member of the program and for which TC charges a fee or requires that the Consumer provide TC some form of consideration to participate in the club or program. However, this term excludes any activity regulated under laws administered by the Florida Department of Insurance or that is otherwise exempt from the requirements of Chapter 501, Part II, Florida Statutes.

14. "Recorded Verification of Consumer Consent to a Membership Charge" or "Recorded Verification" shall mean (i) a Consumer's signature (including without limitation an electronic signature); or (ii) an audiotape or other recording (including without limitation a digital or computerized record) of an Authorized User's Express Affirmative Consent.

15. "TC" shall mean Trilegiant Corporation, and includes its officers, employees, and also Trilegiant Corporation's future successors, assigns, subsidiaries, and wholly-owned entities.

16. "Trial Offer" shall mean an offer to a Consumer of a membership in a Membership Program for a specified period of time during which the person has access to the benefits of membership and can cancel the membership without incurring a Membership Charge.

17. “Unauthorized Membership Charge Complaint” shall mean a statement made by a Member and received by TC or the DEPARTMENT disputing that such Member or an Authorized User enrolled in a TC Membership Program.

D.Relief

For purposes of settlement and to avoid the uncertainty of litigation, TC and the DEPARTMENT agree and TC voluntarily assures the DEPARTMENT that it shall continue to comply with the following provisions:

1.4 Telemarketing Sales Rule

TC shall continue to comply with Federal Telemarketing Sales Rule, 16 C.F.R. § 310, and the Florida Telemarketing Act, §§ 501.601, *et seq.*, Florida Statutes.

2. Disclosures/Express Affirmative Consent

a. Prior to obtaining an Authorized User’s Express Affirmative Consent, TC (with respect to Marketing by TC) shall Clearly and Conspicuously disclose all material terms and conditions for the purchase of the Membership Program, including but not limited to:

- (i) That the purpose of the solicitation is to sell goods or services;
- (ii) The name of each seller offering the Membership Program;
- (iii) A description of the TC Program;
- (iv) The initial amount of the Membership Charge, the frequency of payments (if applicable), and the approximate time when the Membership Charge will be billed to the Consumer’s Account;

- (v) The fact, if true, that the Authorized User's Account (specifying the Account) will automatically be charged the Membership Charge (specifying the initial amount) if the Member does not take affirmative action to cancel the membership within the Trial Offer period (specifying the period);
- (vi) The fact, if true, that TC (or TC's Client) will automatically charge the Authorized User's Account (specifying the amount, if known at the time of the initial solicitation) for the beginning of each new membership period (specifying the period); and
- (vii) In connection with telemarketing sales, provide a toll free number for cancellations and Consumer inquiry that is answered during normal business hours.

b. TC shall not charge an Account, or collect or attempt to collect payment for a Membership Program, directly or indirectly, without first obtaining the Authorized User's Express Affirmative Consent.

c. Express Affirmative Consent shall be deemed given in connection with the sale of any goods or services by means of a telephone call if:

- (i) It includes an express written authorization by an Authorized User, which includes the Authorized User's signature (the term "signature" shall include a verifiable electronic or digital form of signature, to the extent such

form of signature is recognized as a valid signature under applicable federal or state law); or

(ii) There is a Recorded Verification of Consumer Consent to a Membership Charge, and such Recorded Verification meets the following criteria:

(1) During the Recorded Verification, TC Clearly and Conspicuously discloses the following information:

(a) That the Authorized User's Account will be automatically charged (identifying the Account with sufficient specificity so that the Authorized User knows what Account will be charged and the specific initial amount) at the end of the trial period, if any, and for each new membership period at the then current fee, unless the Consumer calls to cancel; and

(b) The Consumer may cancel the membership by calling the toll-free number (specifically to be provided) within the trial period, if any, or thereafter; and

(2) Before the end of the Recorded Verification, TC obtains from the Consumer an affirmative response to an offer to join the Membership Program.

d. Once TC begins to record a conversation in order to create a Recorded Verification, TC shall not cease the recording and create a new recording of the same Consumer for the same transaction, except as a result of a technical problem that is beyond the control of TC.

e. Within a reasonable time after any request, TC shall play a Recorded Verification for an Authorized User, and upon the Consumer's written request, to the Authorized User's bank, credit card company or other billing entity, provided that any such request be made no later than twenty-four (24) months after enrollment in a TC Membership Program. In the event that TC does not have a Recorded Verification for the Authorized User, TC shall issue a full refund of the Consumer's most current membership fee, less any credits previously provided.

f. TC shall disclose during any telephone solicitation that a Consumer will incur a Membership Charge unless the Consumer cancels the membership.

g. TC shall not use the word "free" (other than the term "risk-free" or similar terms) in reference to the charge for the Trial Offer unless the Consumer is not charged for any portion (other than shipping and handling charges) of the Trial Offer period.

h. TC shall not provide a telemarketing script to, draft a telemarketing script for, or approve the telemarketing script of any third party relating to a TC Membership Program unless such script complies with the terms of this Agreement.

i. TC will notify Members of any material adverse change in the terms and conditions or benefits of the Membership Program in which they are enrolled.

j. In instances where there is a Trial Offer for a Membership Program Marketed by TC, TC will not charge a Consumer for a Membership Charge until after the trial period has expired.

3. Use of Live Checks in Marketing Memberships

Commencing no later than one hundred and eighty (180) days after the Execution Date of this Agreement, all live check offers mailed by TC to Consumers, which if cashed or deposited would result in acceptance of a Trial Offer to join a Membership Program, will comply with the following:

- a. The front of the check shall not refer to a “risk free trial.”
- b. The front of the check shall contain a Clear and Conspicuous disclosure similar to the following: "Cashing this check activates a membership in the [Service Name] program.”
- c. In instances where a TC Client or marketing partner’s logo or trade dress is included within the materials accompanying the live check offer, TC will Clearly and Conspicuously disclose that the offer is made on behalf of the TC Membership Program, for example:

“Because you are a valued [Client name] customer, we have chosen [Service Name]to offer you [Service related language].”

4. Use of Surveys in Marketing Memberships

In the event TC uses a survey in connection with the solicitation of a Membership Program:

a. TC shall Clearly and Conspicuously separate the survey portion of the solicitation from the enrollment portion of the solicitation, for example with a perforation or dotted line; and

b. TC shall include within the marketing materials accompanying the survey language Clearly and Conspicuously advising the Consumer that completing the survey is optional.

5. Fulfillment and Membership Kits

Within two weeks of the date of a Member's initial enrollment in Membership Program, TC (with respect to Marketing by TC) shall send the Member a written confirmation or fulfillment materials (which may include electronic delivery) that disclose the following:

a. All material terms, conditions, and limitations of the Membership Program which must be in a clearly readable form and shall be consistent with the representations made at the time of the Consumer's enrollment;

b. Clear and Conspicuous disclosure of the following:

(i) The Consumer has enrolled in a Membership Program or accepted a Trial Offer for a Membership Program;

(ii) The name of the Membership Program;

(iii) If a trial period is offered, that the Consumer will be charged at the end of the trial period unless the Consumer cancels within the trial period;

(iv) The telephone number that the Consumer should call to cancel the Membership Program; and

- (v) If the Membership Program will be automatically renewed, that TC or its Client, as applicable, will automatically charge the Consumer's Account each year (or stated period if different than a year) unless the Account holder cancels the Membership Program prior to that time.

6. Incentives

TC shall continue to comply with Section 817.415 of the Florida Statue on the use of the word "free."

7. Refunds to Consumers

All Eligible Members shall be entitled to a refund of all membership fees (less any refunds previously paid to the Eligible Member) that such Eligible Member paid to TC during the four years prior to the date TC received the Eligible Member's complaint. All Eligible Member complaints sent to the DEPARTMENT shall be forwarded by the DEPARTMENT to the Liaison as defined and provided in Section F.3 of this Agreement. The Liason shall thereafter periodically obtain and provide to the DEPARTMENT an accounting regarding such refunds, beginning six months after the Execution Date of this Agreement.

8. Cancellations

- a. TC shall provide Consumers a reasonable means to cancel membership in a TC Membership Program.
- b. TC shall maintain commercially reasonable customer support to receive and process Consumers' requests for cancellation.

9. Record Keeping Provisions

For each Express Affirmative Consent that is either in writing or is in the form of a Recorded Verification, TC shall maintain a copy of such Express Affirmative Consent for no less than twenty-four (24) months.

E. Effective Date and Duration of Agreement

1. Unless otherwise stated, the provisions of this Agreement shall become effective on the Effective Date, which shall be defined to be the date which is ninety (90) days after the Execution Date.

2. TC's obligations set forth in Section D. of this Agreement shall remain in effect for four years from the Effective Date. Nothing herein shall limit TC's ongoing obligation to comply with all applicable statutes.

F. General Provisions

1. TC shall not represent, directly or by implication, that the Attorney General has approved any of TC's business practices.

2. This Agreement shall be governed by § 501.207 of the FDUPTPA. It is further understood that, pursuant to § 501.207(6) of the FDUTPA, unless this Agreement is rescinded by agreement of the parties or voided by a Court for good cause, subsequent failure to comply with the terms of this Agreement is prima facie evidence of a violation of the FDUTPA.

3. TC shall appoint an independent person or firm, such as its counsel, Coffey & Wright, LLP, to act as a direct liaison to the DEPARTMENT (the "Liaison"). The Liaison shall have the specific responsibility of investigating and using reasonable best efforts to resolve any Consumer complaints directed to the Liaison by the DEPARTMENT, including providing the DEPARTMENT with copies of Recorded

Verifications related to specific Consumer complaints and providing the DEPARTMENT with the accounting of refunds to Consumers described in Section D.7 of this Agreement.

4. TC shall not prohibit its membership service representatives from disclosing to Members their own membership information, provided the membership service representative can verify the identity of the Member.

5. To the extent that the provisions of this Agreement conflict with any Florida, local or federal law that now exists, or is later enacted or amended, such law and not this Agreement shall apply where such conflict exists. For the purposes of this Agreement, a conflict exists if conduct prohibited by this Agreement is required or expressly permitted by such Florida, local or federal law, or if conduct required by this Agreement is prohibited by such Florida, local or federal law.

6. This Agreement shall be binding upon TC, its subsidiaries, future successors, and assigns, solely with respect to their marketing or offering of a Membership Program. If TC merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets to any other business entity, TC shall provide reasonable prior notice of this Agreement to the surviving corporation or the purchaser, assignee, or transferee and its binding effect upon the surviving corporation, purchaser, assignee, or transferee.

7. This Agreement shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of TC. By entering into this Agreement, TC does not agree or concede that the claims or allegations which have or could have been asserted by the DEPARTMENT have merit. The parties acknowledge that there has been no finding of liability of any kind and that this Agreement is being entered into to

avoid the expense and length of further legal proceedings, taking into account the uncertainty and risk inherent in any litigation. The Attorney General, acting on his own behalf and on behalf of the general public, is willing to accept this Agreement in lieu of commencing a statutory action. Nothing in this Agreement, including this paragraph, shall be construed to limit or to restrict TC's right to use this Agreement to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

8. The parties agree that this Agreement constitutes a complete resolution and settlement of all issues and matters relating to or which are the subject of the matters investigated. The DEPARTMENT hereby releases, acquits, and forever discharges TC, its affiliates, predecessor corporations, and Clients, including but not limited to Cendant Corporation and Avis Rent A Car System, Inc., all of their successors and assigns and each of their past or present directors, officers or employees, agents or shareholders, from any and all actions, causes of action, obligations, liabilities, claims or demands for compensatory, special, punitive, exemplary, or treble damages, civil penalties, claims for relief, or demands whatsoever in law or in equity, civil or administrative, which were asserted or maintained, could have been asserted or maintained; or which could in the future be asserted or maintained against them in any civil, or administrative action, or proceeding, based upon, arising out of, or connected with, directly or indirectly, the matters investigated.

9. The DEPARTMENT agrees to return to TC within ten (10) days subsequent to the Effective Date, the "Protected Documents" defined in the April 11,

2002 Order of the Leon County Circuit Court in Case No.: 02-CA-385, specifically the five CD's bate stamped CON 001-005, as well as the documents bate stamped CON 006-236.

10. In the event that TC concludes, based upon changed circumstances, that the terms of this Agreement are unduly restrictive of its business practices, TC may request a modification of the terms of this Agreement. The DEPARTMENT shall make a good faith evaluation of the then existing circumstance and, after collecting the information necessary, make a prompt decision, but in no event more than forty-five (45) days from the request for the same. At the request of either the DEPARTMENT or TC, the parties shall meet to discuss the provision(s) at issue and an appropriate manner in which to resolve any potential disagreement with respect to them. The decision to modify or terminate this Agreement shall rest solely within the discretion of the DEPARTMENT.

11. At any time during the term of this Agreement, TC shall have the right to request that the Attorney General, based on TC's satisfactory performance of the terms of this Agreement, modify or terminate this Agreement. The Attorney General shall make a good faith evaluation of TC's request and make a prompt decision (in no event more than ninety (90) days from TC's request) as to whether to modify or terminate the Agreement. The decision to modify or terminate this Agreement shall rest solely within the discretion of the Attorney General.

12. TC is represented by its counsel Coffey & Wright, LLP in executing this Agreement.

G. Fees and Costs

Within five (5) business days of acceptance of this Agreement by the Deputy Attorney General, TC shall pay Four Hundred Thousand Dollars (\$400,000.00) to the DEPARTMENT as reimbursement for its attorney's fees, costs of investigation and continued supervision. This sum shall be deposited in the Department of Legal Affairs' Revolving Trust Fund, in accordance with Section 501.2101(1), Florida Statutes. Payment to the Legal Affairs Revolving Trust Fund shall be made by check payable to the Department of Legal Affairs' Revolving Trust Fund, and shall be delivered to Eric B. Tilton, Assistant Attorney General, Office of the Attorney General, 400 South Monroe Street, Tallahassee, Florida 32399-6526.

IN WITNESS WHEREOF, the Respondents have caused this Agreement to be executed by Todd Siegel as Executive Vice President and General Counsel of TC, as a true act and deed, in _____ County, _____, this _____ day of _____, 2005.

By my signature I hereby affirm that I am acting in my capacity and within my authority as Executive Vice President and General Counsel of TC and that by my signature I am binding the corporation to this Agreement.

By: _____
TODD SIEGEL, Esq.
Executive Vice President and General Counsel
TRILEGIANT CORPORATION

OFFICE OF THE ATTORNEY GENERAL

By: _____
ERIC B. TILTON
Assistant Attorney General
400 South Monroe Street
Tallahassee, Florida 32399-6526

Accepted this _____ day of _____, 2005

By: _____
GEORGE LEMIEUX
Deputy Attorney General
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