

JUL 22 2016 CM

At 9:50 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-001265

STATE OF TEXAS,
Plaintiff,

v.

LIBERTY PUBLISHERS SERVICE,
INC., EXPRESS PUBLISHERS
SERVICE, INC., and ORBITAL
PUBLISHING GROUP, INC.
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345TH JUDICIAL DISTRICT

FINAL DEFAULT JUDGMENT

On this day came to be heard the above-entitled and numbered cause wherein the State of Texas is Plaintiff and Express Publishers Service, Inc., Liberty Publishers Service, Inc., and Orbital Publishing Group, Inc. are Defendants. Plaintiff appeared through its attorney of record, Gabriella Gonzalez. Liberty Publishers Service, Inc., Express Publishers Service, Inc., and Orbital Publishing Group, Inc. (collectively "Defendants") have not filed an answer or entered an appearance, and did not appear for this hearing.

After considering the pleadings and papers on file, the affidavits presented by Plaintiff, and the evidence presented by Plaintiff on restoration of money to consumers, and the penalties, costs, and attorneys' fees, this Court is of the opinion that the evidence presented by Plaintiff and the material allegations in the State's First Amended Petition are not contested by the Defendants, and Plaintiff is entitled to a default judgment against Defendants.

Therefore, the Court GRANTS a default judgment against Defendants and RENDERS final judgment in favor of the State of Texas as set forth herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds and concludes the following:



1. This Court granted and signed a Default Judgment on Liability in this cause on July 18, 2016. The rulings, findings and conclusions of the Court in the Default Judgment on Liability are incorporated in this Final Default Judgment as if fully set forth herein.
2. Plaintiff presented uncontroverted evidence, and the Court therefore finds, that Defendants mailed magazine and newspaper subscription and subscription renewal notices to consumers nationwide, including to individuals residing in Texas; such notices were also mailed to individuals residing in Travis County, Texas.
3. Plaintiff presented uncontroverted evidence, and the Court therefore finds, that Defendants had no affiliation with the publications they offered to renew nor did they have any authority to sell or solicit subscriptions or subscription renewals on behalf of such publications.
4. Plaintiff presented uncontroverted evidence, and the Court therefore finds, that Texas consumers complained they were misled by the renewal notices, that they likely were charged more for publications than they would have been if the publications were ordered directly through the publishers, or they never received the publications after making the payment solicited by Defendants.
5. Plaintiff presented uncontroverted evidence, and the Court therefore finds, that the Defendants committed at least one hundred six (106) violations of Section 17.46 of the Texas Business and Commerce Code and, given that the total number of mailings was likely much greater than one hundred six (106), the number of potential violations by Defendants of Section 17.46 is likely to be much greater than one hundred six (106).



6. Plaintiff presented uncontroverted evidence, and the Court therefore finds, that the Defendants have, by means of the deceptive solicitations described above, obtained money from identifiable persons residing in Texas to whom such money should be restored.
7. The Court concludes, based on the uncontroverted evidence presented, that Texas consumers who filed complaints with the Office of the Attorney General of Texas, the Better Business Bureau, or the Federal Trade Commission, on or before July 13, 2016, and paid money to a Defendant are entitled to have the money they stated was paid restored to them by the Defendants. The Court finds, based on the uncontroverted evidence presented, that the total amount of money necessary to restore money acquired from the Texas consumers as a result of Defendants' deceptive solicitations is Thirty-One Thousand One Hundred Seventy-Two Dollars and Twenty-Seven Cents (\$31,172.27).
8. The Court finds and concludes, based on the uncontroverted evidence presented, that an award of civil penalties is appropriate to punish Defendants for their violations of the Texas Deceptive Trade Practices – Consumer Protection Act, sections 17.41-.63, Texas Business and Commerce Code (“DTPA”) and to deter the Defendants from violating the DTPA through similar conduct in the future. The Court finds and concludes, based on the uncontroverted evidence presented, that Four Hundred Twenty-Four Thousand Dollars (\$424,000) in civil penalties is a reasonable award for Defendants' violations of the DTPA based on the number of violations and considering the factors for determining penalties set forth in Section 17.47(g) of the Texas Business and Commerce Code. The Court also finds and



concludes that the civil penalties awarded to Plaintiff herein are not compensation for actual pecuniary loss.

9. The Court finds and concludes that Plaintiff has presented uncontroverted evidence of its reasonable and necessary attorneys' fees in prosecuting this matter in the amount of Fifty-Nine Thousand Four Hundred Fifty-Eight Dollars (\$59,458.00).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants, Liberty Publishers Service, Inc., Orbital Publishing Group Inc., Express Publishers Service, Inc., and each Defendant's officers, agents, servants, employees, attorneys and all other persons in active concert or participation with any Defendant who receives actual notice of this Final Default Judgment, are permanently restrained and enjoined from:

- A. Sending written communications to persons or businesses located in Texas to solicit subscriptions or subscription renewals for publications ^{that S.Y.} which the Defendants do not have express written authorization to solicit ~~such subscriptions or subscription renewals from the publisher;~~
- B. Accepting payment from persons or businesses located in Texas for the subscription or subscription renewal of a publication for which the Defendants do not have express written authorization from the publisher to solicit on behalf of; and
- C. Accepting payment from persons or businesses located in Texas for the subscription or subscription renewal of a publication when the Defendants cannot or will not be able to fulfill the subscription offer or subscription renewal at the time such renewal or new subscription is offered or accepted.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that by not answering or appearing in this case after being duly served with citation and a copy of the Plaintiff's Amended



Petition, the Defendants have admitted all allegations of fact set out in the Plaintiff's First Amended Petition and, therefore, liability is conclusively established against each Defendant. Consequently, Defendants Liberty Publishers Service, Inc., Express Publishers Service, Inc., and Orbital Publishing Group, Inc. are jointly and severally liable for all monetary awards herein in favor of Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that final judgment is entered against the Defendants, jointly and severally, for the following monetary awards in favor of Plaintiff:

- A. Fifty-Nine Thousand Four Hundred Fifty-Eight Dollars (\$59,458.00) for reimbursement of attorneys' fees to the Texas Attorney General, which fees were incurred on behalf of the Plaintiff and do not constitute an antecedent debt with respect to this litigation;
- B. Four Hundred Twenty-Four Thousand Dollars (\$424,000) to the Plaintiff as civil penalties for violations of Section 17.46 of the Texas Business and Commerce Code;
- C. Thirty-One Thousand One Hundred Seventy-Two Dollars and Twenty-Seven Cents (\$31,172.27) as restitution for individual consumers. In its sole discretion, Plaintiff shall establish a reasonable process by which consumers may claim or be paid their restitution amounts.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

- A. Defendants shall make payment of all amounts awarded to Plaintiff herein by delivery of a cashier's check or money order, payable to the "Office of the Attorney General." and bearing the reference "AG 143526432". delivered or mailed to the



Office of the Attorney General, ATTN: Accounting Division, 300 West 15th Street,
MC-003, Austin, Texas 78701.

as determined by the District Clerk

- B. All costs of court incurred in this case, ~~which total \$480.00~~, are taxed against the Defendants, jointly and severally.
- C. Defendants shall pay, and are jointly and severally liable for, post-judgment interest at the rate of 5.00% on all monetary awards as provided by law.
- D. In the event that Defendants make a partial payment of the monetary awards herein, any monies received will be distributed by Plaintiff in this order:
 - i. restitution,
 - ii. attorneys' fees, and
 - iii. civil penalties.
- E. Plaintiff shall have all writs and process as may be necessary in the enforcement and collection of this Final Default Judgment.
- F. All relief not expressly granted herein is denied.
- G. This Default Judgment is final and disposes of all claims and causes of action brought by Plaintiff against the Defendants in this cause under the DTPA for Defendants' acts or omissions committed prior to the date of this Final Default Judgment.
- H. This Final Default Judgment is appealable.

SIGNED this 22nd day of July, 2016.

I, VELVA L. PRICE, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 7-22-16

[Signature]
Judge Presiding



VELVA L. PRICE
DISTRICT CLERK
By Deputy:

Carlos Martin

