

LM SEP 22 2008

At 1:44 M.  
Amalia Rodriguez-Mendoza, Clerk

NO. D-1-GV-06-000212

STATE OF TEXAS,  
Plaintiff,

v.

AMERICA'S RECOMMENDED MAILERS,  
INC., AND TINA HENNESSY,  
Defendants.

§ IN THE DISTRICT COURT OF  
§  
§  
§ TRAVIS COUNTY, TEXAS  
§  
§  
§ 126TH JUDICIAL DISTRICT  
§

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS is Plaintiff and AMERICA'S RECOMMENDED MAILERS, INC., and TINA HENNESSY are Defendants. Plaintiff and Defendants agree to the entry of this Agreed Final Judgment and Permanent Injunction (the "Judgment").

**I. STIPULATIONS**

The parties make the following stipulations:

1. At the request of insurance agents, companies, businesses or persons who engage in selling insurance products, annuity products or financial planning services, Defendants have mailed lead card solicitations, as defined below, to solicit interest from elderly persons or seniors as leads to facilitate and enable sales of an insurance policy, annuity, health care plan, financial service plan, estate plan or living trust plan;

2. Plaintiff has alleged claims and causes of actions against Defendants arising from Defendants' alleged misleading and deceptive lead card mailings in violation of applicable requirements of the Texas Deceptive Trade Practices-Consumer Protection Act in the Tex. Bus. & Com. Code §§ 17.46 (a) and (b)(2), (3), (4), (5), (7) & (24) ( the "DTPA"), the Texas Insurance Code §§ 101.051(b)(6), 101.051(b)(8), 101.051(b)(9), 101.051(c), 101.052, 101.102, the former Texas Insurance Code art. 21.21, the current Texas Insurance Code §§ 541.003, 541.051(1)(A) & (B) and

(4), and 541.052 (the "Insurance Code"), and the Texas Department of Insurance's Rules prohibiting Deceptive Acts or Practices prescribed in 28 Tex. Admin. Code §§ 21.1-21.4, 21.101, 21.102(1)(A), (B), (C), (F) & (G), 21.103, 21.104(a)-(f), 21.112 and 21.113(c)(3), (d)(11)-(14) & (k)(3) (the "TDI's Rules");

3. Neither of Defendants has ever been licensed by the Texas Department of Insurance as an insurance agent or insurance company;

4. Defendants' lead card solicitations have used the assumed name NATIONAL PROCESSING CENTER, 325 PENNSYLVANIA AVENUE, SE, WASHINGTON, DC 20003, for seniors to return the lead cards with their personal information; the return address of the lead cards has not been the location of the offices of businesses or persons who obtained the completed lead cards from seniors. Defendants have sent the lead cards to insurance agents, insurance companies, other businesses or persons who requested or use the lead cards containing personal information to solicit purchases of their products by seniors;

5. Defendants represent that they filed a certificate of assumed name to conduct business using the assumed name NATIONAL PROCESSING CENTER on July 19, 2007, as required by the Assumed Business or Professional Name Act, Tex. Bus. & Com. Code § 36.01, *et seq.* ("the Assumed Name Act"). Defendants represent that they have used only the assumed name NATIONAL PROCESSING CENTER and no other assumed name;

6. Defendants' lead card solicitations have not disclosed to seniors the name of the insurance agent, insurance company, other business or person who requested or may use the lead cards to sell an insurance policy, annuity, health care plan, financial service plan, estate plan or living trust plan to seniors;

7. Defendants' lead card solicitations have not disclosed to seniors that the purpose of the solicitations is to furnish leads to businesses and persons who wish to sell an insurance policy, annuity, health care plan, financial service plan, estate plan or living trust plan to the seniors;

8. Defendants' lead card solicitations have not disclosed to seniors the names of the businesses, organizations and/or persons who either have or have not approved, authorized, certified or sponsored the information contained in the solicitations;

9. Defendants admit jurisdiction and venue in this cause;

10. The State of Texas and Defendants agree to the Judgment and request that this Court approve and sign the Judgment;

11. All parties agree that the Judgment does not constitute an admission of any violation of any law by any Defendant;

12. The Judgment is being entered into for the sole purpose of compromising disputed claims without the necessity for additional protracted and expensive litigation; and

13. The Judgment does not affect in any way any private causes of action which exist or may exist in the future.

## II. DEFINITIONS

14. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that as used in the Judgment:

a. "Lead card solicitations" means written communications distributed or mailed to any member of the public, regardless of where that member of the public resides or receives the communication, which, regardless of form, content, or stated purpose are intended to result in a response from the addressee or recipient to be used for the sale or solicitation, to the addressee or

recipient, of an insurance policy, annuity, health care plan, financial service plan, estate plan or living trust plan, or to result in the compilation or qualification of data or lists for the eventual use by any person or business to sell or solicit an insurance policy, annuity, health care plan, financial service plan, estate plan or living trust plan.

b. "Clear and conspicuous" means all information is to be set out in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the disclosure so as to be confusing or misleading.

### **III. PARTIES SUBJECT TO INJUNCTION**

15. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Agreed Final Judgment and Permanent Injunction shall apply to, bind and be enforceable against: (1) each of the respective defendants, AMERICA'S RECOMMENDED MAILERS, INC., and TINA HENNESSY, individually; (2) all of the owners, directors, officers, agents, servants, employees and others acting on behalf of any defendant; (3) all other persons or organizations acting in concert or participation with each of the respective Defendants after receiving actual notice of this injunction directly or indirectly; and (4) any sole proprietorship, partnership, corporation, company, or other organization in which TINA HENNESSY or TOM HENNESSY has any right or obligation regarding direct mail marketing.

### **IV. INJUNCTIVE RELIEF**

16. IT IS FURTHER ORDERED, ADJUDGED and DECREED that each of the Enjoined Parties is hereby permanently enjoined from engaging in any of the following acts or practices regarding lead card solicitations to Texas residents:

- a. creating, processing or mailing lead card solicitations that are untruthful or misleading;
  - b. creating, processing or mailing lead card solicitations that do not contain, in clear and conspicuous terms, the full name of the insurance agent, insurance company, business or person on whose behalf the lead card solicitation is sent;
  - c. creating, processing or mailing lead card solicitations that do not contain a clear and conspicuous disclosure that the insurance agent, insurance company, business or person on whose behalf the lead card solicitation is sent may contact the recipient;
  - d. creating, processing or mailing lead card solicitations that refer to state or federal programs, laws or entities, without a clear and conspicuous disclosure that the solicitation is not affiliated with any governmental agency; and
  - e. creating, processing or mailing lead card solicitations for an event or group meeting where information will be disseminated regarding insurance products or financial products that may be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products or financial products, where such lead card solicitation uses the terms "seminar," "class," "informational meeting," "retirement," "estate planning," "financial planning," "living trust," or substantially equivalent terms to characterize the purpose of the public gathering or event unless the words "insurance sales presentation" or "financial planning sales presentation" or substantially equivalent terms immediately follow those terms in the same type size and font as those terms.
17. IT IS FURTHER ORDERED, ADJUDGED and DECREED that each of the Enjoined

Parties is hereby permanently enjoined from engaging in any of the following acts or practices regarding lead card solicitations to non-Texas residents:

- a. creating, processing or mailing lead card solicitations that are untruthful or misleading;
- b. creating, processing or mailing lead card solicitations that refer to state or federal programs, laws or entities, without a clear and conspicuous disclosure that the solicitation is not affiliated with any governmental agency;
- c. creating, processing or mailing lead card solicitations that are not in compliance with the laws of the State to which the lead card solicitations are sent; and
- d. creating, processing or mailing lead card solicitations that are not in compliance with Federal law.

18. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the Enjoined Parties is hereby permanently enjoined from using the assumed name NATIONAL PROCESSING CENTER, or any other assumed name, unless using such an assumed name is properly authorized pursuant to the Assumed Business or Professional Name Act, Texas Business & Commerce Code § 36.01 et seq., or laws that apply to the use of assumed names in the State or District of Columbia to which the lead card solicitations are sent, and is not confusing, misleading or deceptive with respect to the complete name of the business or person who may use the returned lead cards to solicit sales.

#### V. ATTORNEYS' FEES AND COSTS

19. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the STATE OF TEXAS, Plaintiff, have judgment against and recover from AMERICA'S RECOMMENDED

MAILERS, INC., and TINA HENNESSY, Defendants, jointly and severally, \$38,000.00 as reasonable and necessary attorney's fees and investigative costs payable to the Office of the Texas Attorney General, that the \$38,000.00 shall be paid on or before October 31, 2008, and that these attorney's fees and costs are entitled to be recovered on behalf of the State of Texas and are not compensation for actual pecuniary loss.

20. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the STATE OF TEXAS, Plaintiff, have judgment against and recover from AMERICA'S RECOMMENDED MAILERS, INC., and TINA HENNESSY, Defendants, jointly and severally, all costs of court incurred and that these costs are entitled to be recovered on behalf of the State of Texas and are not compensation for actual pecuniary loss.

#### VI. GENERAL PROVISIONS

21. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court shall issue a writ of injunction in conformity with the law and the terms of this Permanent Injunction and that no bond is required pursuant to the Texas Deceptive Trade Practice-Consumer Protection Act, Texas Bus. & Comm. Code § 17.47(b) and the Texas Insurance Code § 541.203(b).

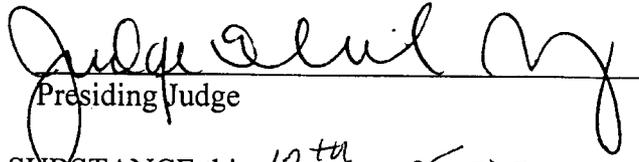
22. IT IS FURTHER ORDERED that post-judgment interest shall accrue on amounts of monetary awards set forth above at the rate prescribed by law from November 1, 2008 until the date paid, if not timely paid as required in paragraph 19.

23. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court shall issue writs of execution and other writs authorized for the enforcement and collection of the monetary awards, if not timely paid.

25. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Agreed Final

Judgment and Permanent Injunction shall be completely final for all purposes upon signing and will not and cannot be appealed and/or otherwise subject to any review authorized by the Texas Rules of Civil Procedure or Texas Rules of Appellate Procedure.

SIGNED this 22<sup>nd</sup> day of September, 2008.

  
Presiding Judge

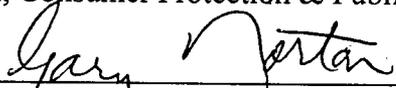
APPROVED AS TO FORM AND SUBSTANCE this 12<sup>th</sup> day of SEPTEMBER, 2008.

GREG ABBOTT  
Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney General

PAUL CARMONA  
Chief, Consumer Protection & Public Health Division

By 

GARY NORTON  
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Assistant Attorney General  
Consumer Protection & Public Health Division  
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Austin, Texas 78711-2548  
(512) 475-3081 voice direct dial  
(512) 463-1267 fax

ATTORNEYS FOR THE STATE OF TEXAS

APPROVED AS TO FORM AND SUBSTANCE this 17<sup>th</sup> day of September, 2008.

WINSTEAD SECHREST & MINICK, P.C.  
401 Congress Avenue, Suite 2100  
Austin Texas 78701

By Peter A. Nolan

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State Bar No. 15062600  
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Fax (512) 370-2850

ATTORNEYS FOR DEFENDANTS, AMERICA'S  
RECOMMENDED MAILERS, INC., and TINA HENNESSY

AGREED TO this 15 day of September, 2008

AMERICA'S RECOMMENDED MAILERS, INC.

By Tina Hennessy  
TINA HENNESSY, PRESIDENT

Tina Hennessy  
TINA HENNESSY, INDIVIDUALLY

**ACKNOWLEDGMENT**

STATE OF TEXAS

COUNTY OF DALLAS

Before me, the Notary Public named below, on this day, personally appeared Tina Hennessy who is known to me to be the person whose name is subscribed to the foregoing Agreed Final Judgment and Permanent Injunction and acknowledged to me that she executed the Agreed Final Judgment and Permanent Injunction in her authorized capacity of President of America's Recommended Mailers, Inc., and her individual capacity, for the purposes and consideration therein expressed.

Given under my hand and seal of office on this 15<sup>th</sup> day of September, 2008.

Carol A. Pniwski

Notary Public, State of Texas

My Commission expires 9-26-2009

