

Supreme Court No. 94785-6

No. 474978-1-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

THE MANDATORY POSTER AGENCY, INC., d/b/a
CORPORATE RECORDS SERVICE, THE
WASHINGTON LABOR LAW POSTER SERVICE,
WASHINGTON FOOD SERVICE COMPLIANCE
CENTER, and STEVEN J. FATA, THOMAS FATA, and
JOSEPH FATA, individually and in their corporate
capacity,

Petitioners

**MEMORANDUM OF AMICI CURIAE
L.A. INVESTORS, LLC, ET AL.,
IN SUPPORT OF PETITION FOR REVIEW**

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TABLE OF CONTENTS

	<u>Page</u>
APPENDICES	ii
TABLE OF AUTHORITIES.....	iii
I. IDENTITY AND INTEREST OF AMICI CURIAE AND INTRODUCTION.....	1
II. STATEMENT OF THE CASE.....	2
III. ARGUMENT	2
IV. CONCLUSION.....	8

APPENDICES

(from *State v. LA Investors, LLC, et al.*, Court of Appeals no. 48970-8-II)

Appendix A: Report of Proceedings of February 12, 2016, pages 1-17

Appendix B: Order Granting Plaintiff State of Washington Motion for Summary Judgment (CP 1180-85)

Appendix C: Judgment for Plaintiff State of Washington (CP 1300-14)

TABLE OF AUTHORITIES

Washington Cases	<u>Page(s)</u>
<i>Barker v. Advanced Silicon Materials, LLC</i> , 131 Wn. App. 616, 128 P.3d 633 (2006).....	7
<i>Behnke v. Ahrens</i> , 172 Wn. App. 281, 294 P.3d 729 (2012).....	5, 8
<i>Burbo v. Harley C. Douglass, Inc.</i> , 125 Wn. App. 684, 106 P.3d 258 (2005).....	7
<i>Fisher v. World-Wide Trophy Outfitters, Ltd.</i> , 15 Wn. App. 742, 551 P.2d 1398 (1976).....	3, 4
<i>Guijosa v. Wal-Mart Stores, Inc.</i> , 144 Wn.2d 907, 32 P.3d 250 (2001)	6, 7
<i>Haner v. Quincy Farm Chemicals, Inc.</i> , 97 Wn.2d 753, 649 P.2d 828 (1982)	3
<i>Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.</i> , 105 Wn.2d 778, 719 P.2d 531 (1986)	6
<i>Holiday Resort Comm’ty Ass’n v. Echo Lake Assocs., LLC</i> , 134 Wn. App. 210, 226-27, 135 P.3d 499 (2006), <i>review denied</i> , 160 Wn.2d 1019 (2007)	5, 8
<i>Klem v. Wash. Mut. Bank</i> , 176 Wn.2d 771, 295 P.3d 1179 (2013)	4
<i>Leingang v. Pierce County Med. Bureau, Inc.</i> , 131 Wn.2d 133, 930 P.2d 288 (1997)	6
<i>Lyons v. U.S. Bank Nat’l Ass’n</i> , 181 Wn.2d 775, 336 P.3d 1142 (2014)	6
<i>Panag v. Farmers Ins. Co. of Wash.</i> , 166 Wn.2d 27, 204 P.3d 885 (2009)	4, 6
<i>State v. Ralph Williams’ Nw. Chrysler Plymouth, Inc.</i> , 87 Wn.2d 298, 553 P.2d 423 (1976)	3

Page(s)

Walker v. Quality Loan Serv. Corp.,
176 Wn. App. 294, 308 P.3d 716 (2013)..... 5

Federal Cases

Carter Prods., Inc. v. F.T.C.,
268 F.2d 461 (9th Cir. 1959) 5

Exposition Press, Inc. v. F.T.C.,
295 F.2d 869 (2d Cir. 1961) 3

F.T.C. v. AMG Servs., Inc.,
29 F. Supp. 3d 1338 (D. Nev. 2014) 4

F.T.C. v. Cyberspace.Com, LLC,
453 F.2d 1196 (9th Cir. 2006) 4, 7

F.T.C. v. Pantron I Corp.,
33 F.3d 1088 (9th Cir. 1994) 4

F.T.C. v. QT, Inc.,
448 F. Supp. 2d 908 (N.D. Ill. 2006),
aff'd, 512 F.3d 858 (7th Cir. 2008) 4

Giant Food, Inc. v. FTC,
322 F.2d 977 (D.C. Cir. 1963)..... 5

Kalwajtys v. F.T.C.,
237 F.2d 654 (7th Cir. 1956) 4

Kraft, Inc. v. F.T.C.,
970 F.2d 311 (7th Cir. 1992) 7

Matter of Cliffdale Assocs.,
103 F.T.C. 110 (1984) 4

Nat'l Bakers Servs., Inc. v. F.T.C.,
329 F.2d 365 (7th Cir.1964) 4

Sw. Sunsites, Inc. v. F.T.C.,
785 F.2d 1431 (9th Cir. 1986) 4

	<u>Page(s)</u>
<i>Vacu-Matic Carburetor Co. v. F.T.C.</i> , 157 F.2d 711 (7th Cir. 1946)	3

Constitutional Provisions, Statutes and Court Rules

15 U.S.C. § 45(a)(1).....	2
15 U.S.C. § 45(b)	2
15 U.S.C. § 45(m).....	2
ER 201(b)	8
ER 201(e)	8
RAP 13.4(b)(2)	2, 8
RCW 19.86.....	1, 3
RCW 19.86.020	2
RCW 19.86.920	3

Treatises

6A WASH. PRAC., WASH. PATTERN JURY INSTR. CIV. (6th ed., updated 2013).....	6
D. DEWOLF, K. ALLEN, D. CARUSO, 25 WASH. PRAC., CONTRACT LAW & PRACTICE § 14:26 (3d ed., updated October 2016).....	6

Other Authorities

<i>FTC Policy Statement on Deception</i> (Oct. 14, 1983)	4
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I. INTRODUCTION AND IDENTITY AND INTEREST OF AMICI CURIAE

This memorandum is submitted on behalf of L.A. Investors, LLC, d/b/a Local Records Office (“LRO”), and Roberto and Laura Romero. In 2012 through 2016, LRO sent mailers to Washington residents who had recently purchased or refinanced real property. The mailer offered a product for purchase—a copy of the deed for the property and a customized “property profile.” The mailer was plainly a solicitation and contained prominent disclosures and disclaimers.

The State sued LRO and the Romeros in Thurston County Superior Court under the Consumer Protection Act (CPA), chapter 19.86 RCW, alleging the mailer was likely to mislead recipients to conclude it was a bill from a government agency.¹ Both sides presented evidence on the issue of deceptiveness, and both sides moved for summary judgment. The court entered summary judgment in the State’s favor and entered a judgment against LRO and the Romeros of over \$3.6 million in penalties, attorney’s fees, and costs. Appx. B, C. LRO and the Romeros appealed, and their appeal is currently pending in the Court of Appeals, Division Two (Court of Appeals no. 48970-8-II; oral argument date: September 7, 2017).²

The State filed this case, against The Mandatory Poster Agency, Inc., *et al.*, seven months after filing suit against LRO and the Romeros.

¹ *State v. LA Investors, LLC, et al.*, Thurston County Superior Court no. 13-2-02286-6.

² The briefing filed in the Court of Appeals is available at http://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm.

Among other things, the State alleges similarly that the defendants sent mailers that mimicked government forms. The pending appeal by LRO and the Romeros shares a common issue with this case: whether capacity to deceive, for purposes of proving an unfair or deceptive act or practice under RCW 19.86.020, is a question of fact where there is disputed evidence on deceptiveness or whether it is always a question of law. In both cases, the courts have held that the capacity of an advertisement or solicitation to deceive is always a question of law. *See* Appx. A (at 13-14), B.

Review is warranted because Division One’s holding here is in conflict with other decisions of the Court of Appeals and with federal decisions, which are supposed to guide Washington courts in interpreting the CPA. RAP 13.4(b)(2). As amici curiae in this matter, LRO and the Romeros urge this Court to accept review and decide that capacity to deceive is not always a question of law but is instead a question of fact where disputed evidence is presented.

II. STATEMENT OF THE CASE

Amici curiae rely upon the Petitioner’s Statement of the Case.

III. ARGUMENT

Congress passed the Federal Trade Commission (FTC) Act in 1914. Section 5 of the FTC Act declares unlawful all “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. § 45(a)(1).³ Twenty-eight

³ The FTC has authority to commence an administrative proceeding and enter an order to cease and desist or to commence a civil action for a penalty for violating the Act. 15 U.S.C. § 45(b), (m).

states have enacted laws analogous to the FTC Act, commonly called “Little FTC Acts.” Washington adopted its version, chapter 19.86 (the CPA), in 1961. The legislature stated its intent that the courts, in construing the CPA, “be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters[.]” RCW 19.86.920.

Before 1983, a communication was deceptive if it had “the tendency and capacity to deceive a substantial portion of the purchasing public.” *Exposition Press, Inc. v. F.T.C.*, 295 F.2d 869, 872 (2d Cir. 1961). In 1976, the Washington State Court of Appeals, Division Three, adopted that test. *Fisher v. World-Wide Trophy Outfitters, Ltd.*, 15 Wn. App. 742, 748, 551 P.2d 1398 (1976) (“To constitute a deceptive practice, the advertisement need only have a tendency or *capacity* to deceive a substantial portion of the purchasing public.”) (citing *Exposition Press*).⁴ Soon after, also citing federal law, this Court adopted the test. *State v. Ralph Williams’ Nw. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 317, 553 P.2d 423 (1976) (citing *Vacu-Matic Carburetor Co. v. F.T.C.*, 157 F.2d 711 (7th Cir. 1946)); *see also Haner v. Quincy Farm Chemicals, Inc.*, 97 Wn.2d 753, 759, 649 P.2d 828 (1982) (citing *Fisher*, 15 Wn. App. at 748).⁵

⁴ The Court of Appeals in *Fisher* observed that the trial court’s determination that the defendant’s advertisements were deceptive was a finding of fact (deemed a verity as it was unchallenged on appeal). 15 Wn. App. at 748.

⁵ An unfair or deceptive act may be established in any of three ways. The State may establish that the defendant: (1) violated a statute the legislature has declared to be a per se violation of the CPA, (2) committed an act or practice not regulated by statute but in violation of public interest, or (3) committed an act or practice that has the capacity to

(Footnote continued next page)

The FTC reworded the federal test in 1983, and the federal courts adopted the new phrasing. *F.T.C. v. Pantron I Corp.*, 33 F.3d 1088, 1095 (9th Cir. 1994) (citing *Matter of Cliffdale Assocs.*, 103 F.T.C. 110, 164-65 (1984) (incorporating *FTC Policy Statement on Deception* dated Oct. 14, 1983)). The test now evaluates whether a representation “is likely to mislead consumers acting reasonably in the circumstances.” *Id.* This Court adopted the rephrased federal test. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 50, 204 P.3d 885, 895 (2009) (analyzing whether “‘there is a representation, omission or practice that is likely to mislead’ a reasonable consumer”) (quoting *Sw. Sunsites, Inc. v. F.T.C.*, 785 F.2d 1431, 1435 (9th Cir. 1986)). Capacity to deceive depends on the “net impression” a communication conveys to a reasonable consumer. *Id.* (quoting *F.T.C. v. Cyberspace.Com, LLC*, 453 F.2d 1196, 1200 (9th Cir. 2006)).

Under federal law, capacity to deceive has always been a question of fact to be determined by the trier of fact. *See, e.g., Kalwajtys v. F.T.C.*, 237 F.2d 654, 656 (7th Cir. 1956) (“The meaning of advertisements or other representations to the public, and their tendency or capacity to mislead or deceive, are questions of fact[.]”); *F.T.C. v. AMG Servs., Inc.*, 29 F. Supp. 3d 1338, 1373 (D. Nev. 2014) (“[In] FTC enforcement actions involving advertisements, which judges are not trained to interpret, ...the “net impression” is generally a question of fact.”) (citing *Nat’l Bakers Servs., Inc. v. F.T.C.*, 329 F.2d 365, 367 (7th Cir.1964)); *F.T.C. v. QT, Inc.*, 448 F.

deceive a substantial portion of the public. *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013). The first method of proof is not at issue.

Supp. 2d 908, 957-58 (N.D. Ill. 2006), *aff'd*, 512 F.3d 858 (7th Cir. 2008) (“The meaning of an advertisement, the claims or net impressions communicated to reasonable consumers, is a question of fact.”).⁶

Amici curiae agree with Petitioner that decisions of the Court of Appeals are in conflict as to whether capacity to deceive is presumptively a question of fact under Washington law. *See* Petition at 9-12. The Court of Appeals has previously held (in non-advertising cases) that capacity to deceive is a question of fact. *See, e.g., Holiday Resort Comm'ty Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 226-27, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007); *Behnke v. Ahrens*, 172 Wn. App. 281, 292, 294 P.3d 729 (2012).⁷ In *Mandatory Poster*, the Court of Appeals has now held that, once the facts of the defendant's conduct are established, capacity to deceive is *always* a question of law. Slip op. at 9-11.

The Court of Appeals in *Mandatory Poster* acknowledged *Holiday Resort* and *Behnke*, but reasoned, “Those cases recognize only that the substantial portion of the public component of a deceptive act or practice may present a question of fact, not that a fact finder weighs whether a representation, omission, or practice is likely to mislead a reasonable consumer.” Slip op. 11. But the phrase “substantial portion of the public” is not a separate “component” of the test for deceptiveness. In adopting the rephrased federal test, this Court recognized that “substantial

⁶ *See also Giant Food, Inc. v. FTC*, 322 F.2d 977, 982 n.12 (D.C. Cir. 1963); *Carter Prods., Inc. v. F.T.C.*, 268 F.2d 461, 496 (9th Cir. 1959).

⁷ *See also Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 318, 308 P.3d 716 (2013).

portion of the public” simply meant, “reasonable consumer[s].” *Panag*, 166 Wn.2d at 50. In characterizing “substantial portion of the public” as a numerical inquiry, the Court of Appeals confuses the unfair-or-deceptive element of a CPA claim with the public-interest-impact element. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 790, 719 P.2d 531 (1986).

To be sure, this Court has held in certain cases that “[w]hether undisputed conduct is unfair or deceptive is a question of law, not a question of fact.” *Lyons v. U.S. Bank Nat’l Ass’n*, 181 Wn.2d 775, 786, 336 P.3d 1142 (2014) (citing *Panag*, 166 Wn.2d at 47; *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 150, 930 P.2d 288 (1997)). But this Court has never extended that holding to cases involving *disputed evidence* on capacity to deceive. Indeed, this Court has recognized that a fact question may exist where deceptive statements are alleged. *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 921, 32 P.3d 250 (2001) (observing that “the jury was free to determine what could constitute an unfair and deceptive act or practice” where deceptive statements were alleged). Significantly, this Court has adopted a pattern jury instruction to guide juries tasked with determining, in civil-damage actions under the CPA, whether an act or practice “had the capacity to deceive a substantial portion of the public.” 6A WASH. PRAC., WASH. PATTERN JURY INSTR. CIV. 310.08 (6th ed., updated 2013).⁸

⁸ *See also* D. DEWOLF, K. ALLEN, D. CARUSO, 25 WASH. PRAC., CONTRACT LAW & PRACTICE § 14:26 (3d ed., updated October 2016) (“Whether an act or practice is unfair
(Footnote continued next page)

In some cases, a court can determine that “no reasonable factfinder could conclude that the solicitation was not likely to deceive consumers acting reasonably under the circumstances.” *Cyberspace.Com*, 453 F.3d at 1201. But other cases may involve potentially disputed evidence, including “a survey ‘of what consumers thought upon reading the advertisement in question,’ ... consumer testimony, expert opinion, and copy tests of ads.” *Kraft, Inc. v. F.T.C.*, 970 F.2d 311, 318 (7th Cir. 1992). Treating capacity to deceive as necessarily a question of law means that in making its determination, a court cannot consider such evidence and must review only the allegedly deceptive communication itself. When a court decides a question of law, it does not assess credibility or weigh evidence; it may only apply legal principles to undisputed facts. *See Barker v. Advanced Silicon Materials, LLC*, 131 Wn. App. 616, 624, 128 P.3d 633 (2006).

The Court of Appeals’ decision in *Mandatory Poster* illustrates the principal problem with eschewing evidence and determining deceptiveness as a question of law. The appellate court determined: “The CRS mass mailings are likely to mislead a reasonable consumer because the undisputed format, images, and content do *mimic government-related forms* and *create the net impression* that the recipient is obligated to return the form and pay \$125 to CRS.” Slip op. at 13 (emphasis added). A

or deceptive is ordinarily a question for the fact finder.”) (citing *Burbo v. Harley C. Douglass, Inc.*, 125 Wn. App. 684, 700, 106 P.3d 258 (2005) (citing *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 921, 32 P.3d 250 (2001))).

MEMORANDUM OF AMICI CURIAE L.A.
INVESTORS, LLC, ET AL., IN SUPPORT
OF PETITION FOR REVIEW - 7

major premise of this determination is that “government-related forms” have a typical appearance, which the court evidently divined without considering extrinsic evidence.⁹ In addition, the court weighed the allegedly misleading language in the solicitation against clarifying disclosures to assess the “net impression” on reasonable consumers, without considering evidence on consumer behavior. Slip op. at 12-13. This Court’s guidance is needed on whether issues should be decided based on evidence rather than legal analysis alone.

IV. CONCLUSION

Review by this Court is warranted because of the conflict between the Court of Appeals’ decision here and the Court of Appeals’ decisions in other cases, including *Holiday Resort* and *Behnke*. Amici curiae thus urge this Court to accept review under RAP 13.4(b)(2).

Respectfully submitted this 23rd day of August, 2017.

CARNEY BADLEY SPELLMAN, P.S.

By 

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⁹ Taking judicial notice of such a matter would not have been appropriate. See ER 201(b), (e).

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 23rd day of August, 2017.


Patti Saiden, Legal Assistant

MEMORANDUM OF AMICI CURIAE L.A.
INVESTORS, LLC, ET AL., IN SUPPORT
OF PETITION FOR REVIEW - 9

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,)
)
 Plaintiff,)
) SUPERIOR COURT NO. 13-2-02286-6
 vs.)
) COURT OF APPEALS NO. 48970-8-II
 LA INVESTORS LLC d/b/a)
 LOCAL RECORDS OFFICE and)
 ROBERTO ROMERO, a/k/a JUAN)
 ROBERTO ROMERO ASCENCION,)
 and LAURA ROMERO,)
)
 Defendant.)

THE HONORABLE MARY SUE WILSON PRESIDING

Summary judgment hearing
 Verbatim report of proceedings
 February 12, 2016
 2000 Lakeridge Drive SW, Building 2
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1 THE COURT: Good afternoon, everybody. Please be
2 seated.

3 I'm going to take a moment to sign on here to our
4 computer system, and then I'll call the case and have you
5 introduce yourselves.

6 All right. So we are here for State of Washington v. LA
7 Investors, cause number 13-2-02286-6. This is a
8 continuation of the summary judgment hearing argument
9 decision time from a few weeks ago when the court heard
10 partial argument and hadn't rendered a decision and then
11 the time scheduled for the pretrial conference.

12 Counsel, go ahead and introduce yourselves, please.

13 MR. NELSON: John A. Nelson, Your Honor, on behalf
14 of the State of Washington.

15 MR. GILMAN: Tom Gilman on behalf of the defendants,
16 Your Honor.

17 THE COURT: Good afternoon. So we're going to start
18 with the court's decision. I want to get my papers in
19 order. All right. So I told you that by today I would
20 have a decision for you on the first piece of the competing
21 motions for summary judgment in this case, and then
22 depending on the outcome, I would hear argument on the
23 remaining portions and we would proceed to talk about
24 scheduling for trial.

25 So I understand that the issue before the court, the

1 first issue, is whether there's a Consumer Protection Act
2 violation, and of course that's a three-part question,
3 whether the conduct was in trade or commerce, whether the
4 mailers here are unfair and deceptive, and whether the
5 conduct affects the public interest. Most of the argument
6 from a few weeks ago, January 15th, focussed on the
7 question of whether the mailers are unfair and deceptive.
8 I believe that there's really no dispute as to whether the
9 mailers were part of trade and commerce, and if the mailers
10 are unfair and deceptive whether the conduct affects the
11 public interest.

12 So beginning with the question of whether the mailers
13 are unfair or deceptive, what we have here is we have a
14 mailer from a company that's labeled on the mailer as the
15 Local Records Office owned by LA Investors, and it is
16 directed to property owners, people who have recently
17 purchased property and/or refinanced their property, and it
18 purports to ask for a payment. The defense indicates that
19 it is offering a product, and the State argues that it's
20 intended to appear as a bill and not to be clear about
21 what's being offered but to appear to look like it's a
22 required payment connected with the recent purchase or
23 refinance of property.

24 Ultimately, the question of whether this is an unfair or
25 deceptive act requires the court to consider the following:

1 Whether an act is unfair requires the court to examine
2 whether the act causes substantial injury, is not
3 outweighed by countervailing benefits to consumers or
4 competition, is not reasonably avoidable by consumers. A
5 deceptive act is one that is narrower than that broad
6 statement of unfair practice, and it is an act that has the
7 capacity to deceive a substantial portion of the public.
8 The factors that the court considers in evaluating the
9 question is to broadly construe the Consumer Protection Act
10 to protect consumers, to facilitate or promote the purposes
11 of the Consumer Protection Act which is so that consumers
12 know what they are buying and understand the terms on which
13 they are buying a product or service.

14 In this state the courts are guided by federal court
15 decisions in interpreting and applying the Consumer
16 Protection Act and in answering the question of whether the
17 particular act, in this case the mailer from Local Records
18 Office, has the capacity to deceive a substantial portion
19 of the public. And that question is a question of law for
20 the court. The court considers this from the perspective
21 of the least sophisticated reader and considers the net
22 impression of the entire communication, which means that
23 even if some aspects or information on the communication
24 are truthful, the question of whether the mailer has the
25 capacity to deceive a substantial portion of the public is

1 determined by the net impression of the entire
2 communication. Disclaimers may cure any communication or
3 may be factored in, but the court understands that it
4 depends upon the net impression of the entire
5 communication, taking into account the disclaimers in the
6 context and the manner that they are presented on the
7 mailer.

8 In analyzing this case the court considered all of the
9 cases that the parties cited and found some cases of
10 particular help to the court, and I'll mention those and
11 summarize what I take away from those cases. The *Panang*
12 case, a 2009 State Supreme Court case, involved tort claims
13 that were presented as debts that were owing. The target
14 audience were individuals who had outstanding claims, and
15 the communication had the capacity to lead the recipient to
16 think that he had a debt that was owing when the debt had
17 not been reduced to an absolute debt payment, or a debt
18 obligation.

19 *FTC versus Commerce Planet* is a federal case from 2012.
20 This was an on-line internet advertisement where the
21 supplier offered a free startup kit for on-line selling,
22 and if the purchaser signed up for the free startup kit, if
23 the purchaser did not cancel within a period of time, he or
24 she would incur monthly charges. The third version of this
25 advertisement removed the free startup kit offer and the

1 company saw a severe downward spike in sales. In the
2 court's evaluation of the net impression of this
3 communication the court noted that initial communications
4 had prominent features that were designed to make the
5 consumer think that the consumer was getting the startup
6 kit, period, and was not incurring any subsequent
7 obligation. The information revealing the monthly charge
8 if there wasn't a cancellation was not particularly
9 prominent in the setting of the internet. It was not in
10 the first couple of pages, including on the landing page,
11 so it wasn't included in the early screens that a buyer or
12 a consumer would notice. Ultimately, the court found that
13 the solicitation had the capacity to deceive a substantial
14 portion of the public, and the court noted that deceptive
15 can be either a representation or an omission, and the
16 question for the court is whether the communication is
17 likely to mislead the reasonable consumer, and the topic
18 that is presented is material if it would likely affect the
19 consumer's choice. And ultimately the court found
20 important, I believe, the fact that with the removal of the
21 free startup kit there was much less interest which
22 indicated that the presentation of the information was
23 critical to the net impression and the ultimate conclusion
24 that it was deceptive.

25 I also found *FTC versus Cyberspace*, a Ninth Circuit case

1 from 2006, helpful. There was a mailer for internet
2 services. It presented itself as looking like a rebate
3 check, and on the back of the check it indicated if the
4 check was cashed, the consumer would be signing up for a
5 monthly internet service that would be added to their phone
6 bill. And this consequence was located, as I said, on the
7 back of the check in small print. The court found the net
8 impression of the mailing was that it was a refund or a
9 rebate, not an offer for services, and of importance to the
10 court was that the mailer and the check had the recipient's
11 name and phone number on it, and it left the impression of
12 inviting the consumer to cash the check, and it was
13 intended to obligate the consumer for services without the
14 consumer knowing the true effect of cashing the check.

15 Finally, an older case from the Ninth Circuit, 1969,
16 *Floersheim versus FTC*. Here there were creditor forms that
17 were sent to debtors to secure information, and the return
18 address was Washington D.C. The design of the forms and
19 the font and the terminology and the reference to
20 Washington D.C. were all considered as part of the overall
21 communication that the court concluded had its purpose of
22 deceiving the debtor and leaving the impression that the
23 form was from the government and the recipients of the
24 communication were required to respond.

25 So looking at the communication in this case we have an

1 envelope, and then we have a two-page document that comes
2 in the envelope, and each party makes a number of arguments
3 including supporting materials from members of the public
4 and from experts. The arguments on behalf of the State are
5 as follows: In summary, the Court understands the
6 arguments to be that the content and presentation of the
7 mailer should be examined as a whole and the notation that
8 the mailer is from a company called Local Records Office
9 combined with its Olympia mailing address from the State's
10 perspective is designed to make the communication look like
11 it's from a government office coming from the state capital
12 with a name like "local" and "office," that there is
13 specific information both on the envelope and on the mailer
14 itself that has information specific to the recipient,
15 name, address, property information, property transfer
16 date, the timing of the mailer corresponding within a few
17 weeks of a recent property purchase, the fact that the
18 document in the middle of the first page says boldly
19 "county public information," suggesting this is from a
20 county office, the indication that this is a bill
21 associated with a property transaction by having a "please
22 respond" with a deadline date, even though the deadline
23 doesn't mean anything according to the company, and then
24 the payment stub that appears to look like a billing
25 payment stub and lists what is being collected as a service

1 fee.

2 All of these things together, from the State's
3 perspective, indicate that the content and presentation as
4 a whole make this appear to be a statement from a
5 government office connected to the recent property
6 transaction that the consumer is required to respond to and
7 pay. The State argues that the disclaimers are ineffective
8 when considered in the context of the rest of the document.
9 The State points to the actual response out of 215,000 or
10 so mailers, 8,000 consumers purchased the product, and
11 indicates that that is a high rate of return, about two
12 times or more the typical return for a service or product
13 offered in this manner. The State offers a number of
14 declarations from consumers who describe that they believed
15 they were required to respond and pay this amount, and the
16 State describes these actual people who were "duped," in
17 the State's word, as many who have higher education degrees
18 and might be considered as more sophisticated than the
19 least sophisticated consumer. The State points out that
20 the target audience was designed to get the attention of
21 recent home purchasers and refinancers, indicating that it
22 was timed so that the audience would believe it was
23 connected to the property purchase or refinance.

24 The first round of mailers included a statement in the
25 top right-hand corner of the first page that referenced

1 that the record you were receiving is "in the county where
2 your property is located in for up to \$89," referencing or
3 intended to leave the impression that this purchase was in
4 the same cost range as what one would purchase from a
5 county office, and the State offers evidence that all local
6 offices either provide copies of deeds for free or at a
7 nominal cost that doesn't come anywhere near \$89. The
8 court understands that sometime in 2013 that reference was
9 eliminated from the communication. Then ultimately the
10 State offers the expert Mr. Pratkanis who from the court's
11 perspective summarizes much of the information that I've
12 just recounted and offers the conclusion that the
13 communication is deceptive and designed to be misleading to
14 the average consumer and also offers opinions regarding the
15 response rate being particularly high.

16 The defense argues that the disclaimers here are
17 effective, that they are in capital letters, that they are
18 prominently placed on the document, that the content of the
19 disclaimers say repeatedly "This is not a government
20 document." The court counts four different places on the
21 mailing that indicates that "This is not a government
22 document." On the envelope in capital letters underneath a
23 mail tampering warning the mailer indicates "This is not a
24 government document." On the top of the first page of the
25 mailing there is a box with a square round rectangle around

1 it in all caps and it indicates "This service to obtain a
2 copy of your deed or other record of title is not
3 associated with any governmental agency," and then near the
4 bottom of the first page before the mail stub in smaller
5 capital letters is another paragraph that says a couple of
6 times "Local Records Office is not affiliated with the
7 county in which your deed is filed in, nor affiliated with
8 any government agencies. This offer serves as a soliciting
9 for services and not to be interpreted as bill due. This
10 product or service has not been approved or endorsed by any
11 governmental agency, and this offer is not being made by an
12 agency of government. This is not a bill. This is a
13 solicitation. You are under no obligation to pay the
14 amount stated unless you accept this offer. Local Records
15 Office operates in accordance with both business and
16 professions code" -- with a number.

17 And then on the final page, which I will call the fine
18 print reference to a number of seemingly definitions of
19 terms used in property transactions, the last couple of
20 paragraphs are headed by the word "disclaimer," and again
21 says Local Records Office is not affiliated with any state
22 or the United States or the county records, with some
23 additional detail there.

24 So the defense argues that the content of these
25 disclaimers, the numbers of these disclaimers, their

1 placement, their use of capital letters, all serve to make
2 this communication truthful and not deceptive. The defense
3 also argues that the actual name of the company, Local
4 Records Office, is not referencing a state or county
5 agency, that there are no seals, and that the typical
6 consumer would know the names of the local county and the
7 local county agency or state agencies that would be
8 involved in property transactions, and without seals this
9 document, according to the defense, does not look like an
10 official government record. Defense also argues that
11 "respond promptly" in several places or "please respond by"
12 in several places on the mailing is not the same or the
13 equivalent as a payment-due or bill-due statement. And the
14 defense also argues that there is not a substantial portion
15 of complainers about this, that the number of people who
16 asked for their money back was less than one hundred out of
17 the 215,000 or so mailers, or less than one hundred out of
18 8,000 or so purchasers, and the defense argues that that is
19 a very low complaint rate, which they offer their expert
20 Bruno in part to suggest that that should be an indicator
21 that this mailer does not have a capacity to deceive a
22 substantial portion of the public.

23 Ultimately, having reviewed this question and
24 deliberated over it for some time and determining that the
25 question is a question of law for the court and applying

1 the principles that I outlined at the outset, I am finding
2 that on summary judgment that this mailer does have the
3 capacity to deceive a substantial portion of the public. I
4 have made this determination considering the mailer from
5 the perspective of the least sophisticated reader
6 considering the net impression of the entire communication.
7 Even though some information is truthful and is offered
8 with an attempt to indicate that this is not from a
9 government agency, I do find that the disclaimers here,
10 when considered with the overall net impression, are not
11 effective to support a different conclusion.

12 I find this both for the mailer in its form when it
13 referenced the \$89 in the top right-hand box of the first
14 page of the inside piece of paper, and after. I think the
15 overall net impression in both situations is that it has
16 the capacity to deceive a substantial portion of the
17 public. I find that based upon -- I am not going to recite
18 everything I already identified I fear, but I will indicate
19 that this is looking at the overall content and
20 presentation, that that combined with the targeted
21 audience, with the recipients having been recent purchasers
22 or refinancers, with a name of a company combined with the
23 capital of the state, the company Local Records Office, an
24 unsophisticated or a least sophisticated consumer could
25 easily think that that is the name of their local records

1 office.

2 While the court and the lawyers in the courtroom would
3 know or be expected to know that it's not from Thurston
4 County and that there isn't a county agency named Local
5 Records Office, the court does not think that the least
6 sophisticated consumer would likely know and appreciate
7 what the names of state agencies or county agencies are.
8 So the name of the company combined with the return address
9 being Olympia and the combination of the document having
10 specific information about the person who has recently
11 purchased or refinanced, the date of that purchase and
12 refinance, a property identification number, and specific
13 information about the sale amount, a deadline, and the
14 overall presentation of "please respond by" and a service
15 fee, the court finds that this mailer has the capacity to
16 deceive a substantial portion of the public, and for all
17 those reasons the court is prepared today to rule as a
18 matter of law that these mailers represent unfair and
19 deceptive practices in violation of the Consumer Protection
20 Act.

21 As I alluded to earlier, it's my impression that this
22 was the most significant issue, but as to the other two
23 issues supporting a conclusion of a Consumer Protection Act
24 violation, the question of whether the defendants are
25 engaged in trade or commerce seems to be an easy conclusion

1 for the court as these mailers were directed at over
2 200,000 consumers in the state of Washington and the
3 company set up a mailing office in Olympia, Washington, and
4 intended to sell its service or product to Washington
5 consumers.

6 And does the defendant's conduct affect the public
7 interest. These acts were committed in the course of the
8 defendant's business. 215,000 or so mailings do represent
9 a pattern or generalized course of conduct. This makes the
10 acts repeated, and as I understand it the company continues
11 to send out these mailings and has been sending these
12 mailings out for three or more years so there's a real and
13 substantial potential for repetition, and for these reasons
14 the court finds that the conduct does affect the public
15 interest.

16 So Mr. Nelson, you tell me what kind of a written ruling
17 we need at this juncture to reflect the court's decision.
18 I know that your proposed order, of course, did not have
19 that much detail. What I am prepared to do at this time is
20 to hear argument from counsel on the issues that you didn't
21 present argument on January 15th, and those were in the
22 State's brief, and those were whether injunctive relief is
23 appropriate on summary judgment, restitution and civil
24 penalties on summary judgment, and as I understand the
25 motion for summary judgment from the State, asks for a

1 determination that attorney's fees are appropriate but did
2 not specifically advance any specific amount. So I would
3 like to hear from the parties on whether injunctive relief,
4 restitution and civil penalties are appropriately addressed
5 on summary judgment at this juncture.

6 Mr. Nelson, if you're ready to go forward on that, I
7 would hear from you.

8 MR. NELSON: I am, Your Honor. If I could have one
9 question with regard to clarity. As part of your ruling
10 does your ruling find that the individual defendants are
11 individually liable for their wrongdoing under the Consumer
12 Protection Act or would you require further briefing on
13 that issue, Your Honor?

14 THE COURT: I would like you to address that. I did
15 read the briefing. I meant to address that up front. I
16 meant to have asked you up front to include that in your
17 remarks. I will note that in your opening brief,
18 Mr. Nelson, in your introduction you had asked for
19 injunctive relief, but in the content of the briefing
20 section I didn't find a section devoted to injunctive
21 relief. So it would be helpful if you address whether
22 we're ready for that relief at this time, and of course
23 opposing counsel can address whether or not it's time or
24 appropriate to address that at this time.

25 MR. NELSON: Your Honor, from the State's

APPENDIX B

2016 FEB 12 PM 4:37

Linda Myhre Entley
Thurston County Clerk

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EXPEDITE
 No hearing set
 Hearing Set
Date: 12/18/15
Time: 9:00 a.m.
Judge/Calendar: Hon. Mary Sue Wilson

13-2-02286-6
ORGSJ
Order Granting Summary Judgment
118568



**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

LA INVESTORS, LLC, d/b/a LOCAL RECORDS OFFICE; and ROBERTO ROMERO, a/k/a JUAN ROBERTO ROMERO ASCENCIO, individually and as a Member and Manager of LA INVESTORS, LLC, and on behalf of the marital community comprised of Roberto Romero and Laura Romero; and **LAURA ROMERO,** individually and as a Member and Manager of LA INVESTORS, LLC and on behalf of the marital community comprised of Roberto Romero and Laura Romero.

Defendants.

NO. 13-2-02286-6

ORDER GRANTING PLAINTIFF'S
STATE OF WASHINGTON MOTION
FOR SUMMARY JUDGMENT

~~[PROPOSED]~~

msw

This matter, having come before the Court on the State of Washington's Motion for Summary Judgment, and the Court having heard the arguments, if any, of the parties, and considered the following material:

1. Declaration of John Nelson and exhibits attached thereto;
2. Declaration of Anthony Pratkanis and exhibits attached thereto;
3. Declaration of Lesli Ashley and exhibits attached thereto;

- 1 4. Declaration of Asta Margaryan;
- 2 5. Declaration of Jennifer Richter;
- 3 6. Declaration of Melanie Muzatko;
- 4 7. Declaration of Jason Bernstein;
- 5 8. Declaration of Daniel Bohm;
- 6 9. Declaration of Margriet Denny;
- 7 10. Declaration of Mireya Espindola;
- 8 11. Declaration of Della Hallengren;
- 9 12. Declaration of Lindri Henegar;
- 10 13. Declaration of Michael Kennedy;
- 11 14. Declaration of Erika Ludwig;
- 12 15. Declaration of Vitaliy Marchenko;
- 13 16. Declaration of Gwendelyn Marshall;
- 14 17. Declaration of Lindsey Miller;
- 15 18. Declaration of Athena Osborn;
- 16 19. Declaration of Ingrid Parker;
- 17 20. Declaration of Matthew Parker;
- 18 21. Declaration of Krista Richardson;
- 19 22. Declaration of Angela Romano;
- 20 23. Declaration of Pablo Sala;
- 21 24. Declaration of Susan Sauer;
- 22 25. Declaration of Theodore Smith;
- 23 26. Declaration of Jennifer Snowden;
- 24 27. Declaration of Howard Stambor;
- 25 28. Declaration of James Touhey;
- 26 29. Declaration of Ingrid Troy;

- 1 30. Declaration of Gerald Willits;
- 2 31. Declaration of Kyoko Wright;
- 3 32. State of Washington's Motion for Summary Judgment;
- 4 33. Any Opposition or Reply briefs and supporting declarations as well as any other
- 5 papers or pleadings on file related to the State's Motion for Summary Judgment;
- 6 34. Oral Argument JAN 15th 2016; and
- 7 35. Oral Argument FEB 12th 2016; and
- 8 36. _____.

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9 Having found that there exist no issues of material fact, it is therefore ORDERED that
 10 the State of Washington's Motion for Summary Judgment is GRANTED. The Court therefore
 11 DECLARES that: In Part.

12 1. Defendant LA Investors, LLC d/b/a Local Records Office is a California Limited
 13 Liability Company principally located in Bellflower, California. Defendant is registered in
 14 Washington as a foreign limited liability company and conducts business in the State of
 15 Washington.

16 2. The State must prove three elements to prevail on its Consumer Protection Act
 17 (CPA) claim: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce;
 18 (3) that affects the public interest. *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2001);
 19 *see also Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531
 20 (1985). Whether a particular act is unfair or deceptive is a question of law. *See Panag v. Farmers*
 21 *Ins. Co. of Washington*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009).

22 3. Defendants created and mailed 215,304 solicitations to Washington consumers.
 23 The Court finds that the Defendants' solicitation was unfair and deceptive and violated the CPA.
 24 Defendants created the deceptive net impression that Defendants' solicitation was from a
 25 governmental agency or was a bill that Washington consumers were obligated to respond to or
 26

between
 July 2012
 and July
 2015.

MSW

1 pay. Defendants' solicitation had the capacity to deceive a substantial number of Washington
2 consumers.

3 4. Defendants were engaged in trade and commerce as they sent 215,304 deceptive
4 solicitations to Washington consumers and 7,985 Washington consumers were deceived into
5 purchasing the product ~~between July 2012 and July 2015.~~ *between July 2012 and July 2015.*

6 5. Defendants' acts affected the public interest. The unfair and deceptive acts were
7 committed in the course of Defendants' business, there was there a pattern or generalized course
8 of conduct, the acts were repeated, and many consumers were affected or likely to be affected.

9 6. ~~Individuals, including corporate officers, may be personally liable for conduct that
10 violates the CPA if he or she "participate[d] in" or "with knowledge approve[d] of" the practice
11 that violates the CPA. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298,
12 322, 553 P.2d 423 (1976).~~

13 7. ~~The individual Defendants, Roberto Romero, a/k/a Juan Roberto Romero
14 Ascencio and Laura Romero, are found personally liable for the conduct that violates the CPA
15 described herein. Roberto Romero, a/k/a Juan Roberto Romero Aseencio and Laura Romero are
16 the sole members and managers of LA Investors, LLC and have been directly involved in
17 the day-to-day operations of the business from inception to the present. Roberto Romero,
18 a/k/a Juan Roberto Romero Ascencio and Laura Romero participated in the design and
19 approval of the deceptive mailing.~~

20 8. ~~In determining the appropriate amount for a civil penalty, the Court finds that
21 Defendants repeatedly committed the same violations of the CPA through transactions with
22 thousands of consumers in Washington. Defendants did not act in good faith. The acts and
23 practices described herein were not isolated instances of misjudgment, but rather, an intentional
24 and deliberate practice. Defendants' violations caused substantial injury to the public.~~

25 *Consumer restitution is ordered in an amount to*
26 *be determined later.*

MSW
of the
Consumer
Protection
Act.
(RCW 19.86)

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Reserved

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1 Defendants, as well as their successors, assigns, officers, agents, servants, employees,
2 representatives, and all other persons in active concert or participation with them, are
3 PERMANENTLY ENJOINED, pursuant to RCW 19.86.080(1) from:

4 1. Engaging in acts or practices that violate the CPA in the solicitation of or
5 transactions with Washington consumers;

6 2. Engaging in any other acts or practices that violate the CPA;

7 3. Failing to ensure that all their successors, assigns, officers, agents, servants,
8 employees, representatives, and all other persons in active concert or participation with them
9 receive a copy of this Order.

10 The Court ORDERS that Defendants shall jointly and severally pay:

11 ~~1. An amount equal to all fees received from (and not previously refunded to) the
12 Washington consumers that responded to the Defendants' solicitation.~~

13 ~~a. Defendants shall identify all fees received from (and not previously
14 refunded to) the Washington consumers that responded to the Defendants' solicitation
15 to the State and the Court on or before January __, 2016. Defendants shall also
16 provide to the State on or before January __, 2016, a list of all its past and present
17 Washington consumers, most recent contact information for those consumers, and the
18 amount of all un-refunded amounts received from each consumer, in order to facilitate
19 distribution of this restitution payment, which is ordered pursuant to RCW 19.86.080.~~

20 ~~b. The State shall submit a proposed method to administer the restitution
21 payments to the Court by January __, 2016. Any objection shall be submitted by
22 January __, 2016, and any response shall be submitted by February __, 2016. The
23 Court will determine the method to administer the restitution payments without oral
24 argument unless it notifies the parties.~~

25 ~~c. Defendants shall bear all costs for the administration of the restitution
26 payments.~~

Civil penalties in an amount to be determined later

*msw
Reserved*

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APPENDIX C

2016 MAY -3 PM 3: 03

Linda Myhre Enlow
Thurston County Clerk

13-2-02286-6
JD
Judgment
226726



STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

LA INVESTORS, LLC, d/b/a LOCAL RECORDS OFFICE; and ROBERTO ROMERO, a/k/a JUAN ROBERTO ROMERO ASCENCIO, individually and as a Member and Manager of LA INVESTORS, LLC, and on behalf of the marital community comprised of Roberto Romero and Laura Romero; and LAURA ROMERO, individually and as a Member and Manager of LA INVESTORS, LLC, and on behalf of the marital community comprised of Roberto Romero and Laura Romero,

Defendants.

NO. 13-2-02286-6

JUDGMENT FOR PLAINTIFF
STATE OF WASHINGTON

~~PROPOSED~~

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I. JUDGMENT SUMMARY

1.1 Judgment Creditor: State of Washington

1.2 Judgment Debtors: LA Investors, LLC, d/b/a Local Records Office, and Roberto Romero, a/k/a Juan Roberto Romero Ascencio, jointly and severally.

1.3 Principal Judgment Amount:

a) Civil Penalties: \$2,569,980.00

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b) Restitution:	\$856,981.00
c) Costs & Attorneys' Fees:	\$176,806.73
d) Total Judgment:	\$3,603,767.73
1.4 Post Judgment Interest Rate	12% per annum
1.5 Attorneys for Judgment Creditor:	John Nelson Assistant Attorney General
1.6 Attorneys for Judgment Debtors:	Thomas Gilman Barrett & Gilman

II. DEFINITIONS

For the purpose of this Judgment, the term "Defendants" shall include only Defendants LA Investors, LLC, d/b/a Local Records Office and Roberto Romero, a/k/a Juan Roberto Romero Ascencio.

III. JUDGMENT

This matter, having come before the Court on the State of Washington's Motion for Summary Judgment, and the Court having heard the arguments of the parties, and considered the following material:

1. Declaration of John Nelson and exhibits attached thereto;
2. Declaration of Anthony Pratkanis and exhibits attached thereto;
3. Declaration of Lesli Ashley and exhibits attached thereto;
4. Declaration of Asta Margaryan;
5. Declaration of Jennifer Richter;
6. Declaration of Melanie Muzatko;
7. Declaration of Jason Bernstein;
8. Declaration of Daniel Bohm;
9. Declaration of Margriet Denny;

- 1 10. Declaration of Mireya Espindola;
- 2 11. Declaration of Della Hallengren;
- 3 12. Declaration of Lindri Henegar;
- 4 13. Declaration of Michael Kennedy;
- 5 14. Declaration of Erika Ludwig;
- 6 15. Declaration of Vitaliy Marchenko;
- 7 16. Declaration of Gwendelyn Marshall
- 8 17. Declaration of Lindsey Miller;
- 9 18. Declaration of Athena Osborn;
- 10 19. Declaration of Ingrid Parker;
- 11 20. Declaration of Matthew Parker;
- 12 21. Declaration of Krista Richardson;
- 13 22. Declaration of Angela Romano;
- 14 23. Declaration of Pablo Sala;
- 15 24. Declaration of Susan Sauer;
- 16 25. Declaration of Theodore Smith;
- 17 26. Declaration of Jennifer Snowden;
- 18 27. Declaration of Howard Stambor;
- 19 28. Declaration of James Touhey;
- 20 29. Declaration of Ingrid Troy;
- 21 30. Declaration of Gerald Willits;
- 22 31. Declaration of Kyoko Wright;
- 23 32. State of Washington's Motion for Summary Judgment;
- 24 33. Defendants' Response in Opposition to Motion for Summary Judgment;
- 25 34. Declaration of Thomas L. Gilman in Support of Defendants' Response in
- 26 Opposition to Motion for Summary Judgment and exhibits thereto;

- 1 35. Declaration of Albert V. Bruno in Opposition to Plaintiff's Motion for Partial
- 2 Summary Judgment and exhibits thereto;
- 3 36. Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment;
- 4 37. Defendants' Motion for Partial Summary Judgment;
- 5 38. Declaration of Thomas L. Gilman in Support of Defendants' Motion for Partial
- 6 Summary Judgment and exhibits thereto;
- 7 39. Plaintiff's Response [to] Defendants' Motion for Summary Judgment;
- 8 40. Declaration of Rebecca Hartsock and exhibits thereto;
- 9 41. Supplemental Declaration of John Nelson in Support of Plaintiff's Response to
- 10 Motion for Summary Judgment and exhibits thereto;
- 11 42. Second Supplemental Declaration of John Nelson in Support of Plaintiff's
- 12 Response to Motion for Summary Judgment;
- 13 43. Declaration of Thomas L. Gilman in Strict Reply in Support of Motion for
- 14 Partial Summary Judgment and exhibits thereto;
- 15 44. Defendants' Strict Reply in Support of Motion for Partial Summary Judgment;
- 16 45. State of Washington's Motion for Costs and Fees;
- 17 46. Declaration of Thomas L. Gilman in Response to Plaintiff's Motion for Fees
- 18 and Costs and exhibits thereto dated March 2, 2016; and
- 19 47. Declaration of Thomas L. Gilman dated March 8, 2016, and exhibits thereto.

20 The Court hereby restates and incorporates by reference its February 12, 2016 Order
21 Granting in Part Plaintiff State of Washington's Motion for Summary Judgment and Denying
22 Defendants' Motion for Partial Summary Judgment. Having determined that there is no just
23 reason for delay in the entry of a final judgment against Defendants, and being fully advised,
24 the Court hereby makes and enters the following:

1 **IV. UNDISPUTED FACTS**

2 4.1 Defendant LA Investors, LLC, d/b/a Local Records Office, is a California
3 Limited Liability Company principally located in Bellflower, California. Defendants are
4 registered in Washington as a foreign limited liability company and have conducted business in
5 the state of Washington since 2012.

6 4.2 In exchange for a payment of \$89, Defendants offered to provide Washington
7 consumers a copy of their deed and a property profile containing data about their real estate using
8 the assumed business name of Local Records Office.

9 4.3 Individual Defendant Roberto Romero, a/k/a Juan Roberto Romero Ascencio,
10 has been directly involved in the day-to-day operations of the business from inception to
11 the present. Roberto Romero, a/k/a Juan Roberto Romero Ascencio, created the Local Records
12 Office business model, participated in the design of the solicitation at issue before the Court,
13 and approved all versions for dissemination in Washington.

14 4.4 Defendants were at all times relevant to this lawsuit, engaged in trade and
15 commerce as they sent 256,998 solicitations to Washington consumers and 9,695 Washington
16 consumers purchased the product.

17 **V. CONCLUSIONS OF LAW**

18 5.1 The Court has jurisdiction of the subject matter of this action and of the parties
19 hereto, and Plaintiff's Complaint states claims upon which relief may be granted.

20 5.2 The Attorney General has jurisdiction to bring this action under RCW
21 19.86.080.

22 5.3 Defendants have engaged in the conduct described in the Undisputed Facts
23 above in Thurston County and elsewhere in the state of Washington.

24 5.4 Venue is proper in Thurston County pursuant to RCW 4.12.020 and 4.12.025.

25 5.5 The State must prove three elements to prevail on its Consumer Protection Act
26 (CPA) claim: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce;

1 (3) that affects the public interest. *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2001);
2 *see also Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531
3 (1985). Whether a particular act is unfair or deceptive is a question of law. *See Panag v.*
4 *Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009).

5 5.6 Defendants' conduct as described in the Findings of Fact above constitutes
6 violations of the Consumer Protection Act. Specifically, Defendants sent at least 256,998
7 deceptive solicitations to Washington consumers between June 2012 and February 2016.
8 Each version of this solicitation was deceptive and created the net impression that it came
9 from a government agency or was a bill that consumers were otherwise obligated to pay. In
10 sending these deceptive solicitations, Defendants violated the Washington Consumer
11 Protection Act.

12 5.7 Plaintiff is entitled to a judgment ordering Defendants to pay a civil penalty for
13 each violation of the Consumer Protection Act, pursuant to RCW 19.86.140.

14 5.8 Plaintiff is entitled to a Decree ordering Defendants to pay restitution to
15 consumers pursuant to RCW 19.86.080.

16 5.9 Plaintiff is entitled to a Decree binding upon Defendants and their successors,
17 officers, employees, agents, servants, transferees, directors, and all persons in active concert
18 or participation with Defendants permanently enjoining Defendants from engaging in the
19 practices violating the Consumer Protection Act as described above and requiring Defendants
20 to comply with the injunctive relief outlined below.

21 5.10 Plaintiff is entitled to a Decree ordering Defendants to pay Plaintiff's costs and
22 fees incurred in the prosecution of this action pursuant to RCW 19.86.080.

23 5.11 The fees and costs incurred by Plaintiff in the prosecution of this action are
24 reasonable.

25 5.12 Individuals, including corporate officers, may be personally liable for conduct
26 that violates the CPA if he or she "participate[d] in" or "with knowledge approve[d] of" the

1 practice that violates the CPA. *State v. Ralph Williams' Nw. Chrysler Plymouth, Inc.*, 87 Wn.2d
2 298, 322, 553 P.2d 423 (1976).

3 5.13 Individual Defendant Roberto Romero, a/k/a Juan Roberto Romero Ascencio, is
4 found personally liable for the conduct that violates the CPA described herein. Roberto Romero,
5 a/k/a Juan Roberto Romero Ascencio, is one of two members and managers of LA Investors,
6 LLC, and has been directly involved in the day-to-day operations of the business from
7 inception to the present. Roberto Romero, a/k/a Juan Roberto Romero Ascencio, created the
8 Local Records Office business model, participated in the design of the deceptive mailing and
9 approved all versions for dissemination in Washington.

10 5.14 Defendants' acts affected the public interest and caused injury to the public.
11 Defendants' unfair and deceptive acts were committed in the course of Defendants' business,
12 they were part of a pattern or generalized course of conduct, the acts were repeated for over three
13 years, and thousands of consumers were affected or likely to be affected through the loss of
14 money and/or the time spent reviewing and responding to the solicitations.

15 5.15 The Court having made the foregoing Conclusions of Law, and accordance
16 therewith, the Court enters the following:

17 **VI. JUDGMENT AND DECREE**

18 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as
19 follows:

20 6.1 The Court hereby declares that all versions of the solicitation sent to Washington
21 consumers by Defendants between June 2012 and February 2016 are deceptive and violate RCW
22 19.86. These solicitations created the net impression that they originated from the government or
23 were a bill consumers were otherwise obligated to pay.
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1 **INJUNCTION**

2 Defendants, as well as their successors, assigns, officers, agents, servants, employees,
3 representatives, and all other persons in active concert or participation with them, are
4 PERMANENTLY ENJOINED, pursuant to RCW 19.86.080(1) from:

- 5 1) Engaging in acts or practices that violate the CPA in the solicitation of
6 or transactions with Washington consumers;
- 7 2) Engaging in any other acts or practices that violate the CPA; and
- 8 3) Failing to ensure that all their successors, assigns, officers, agents,
9 servants, employees, representatives, and all other persons in active concert or participation
10 with them receive a copy of this Order.

11 6.2 The injunctive provisions of this Judgment shall apply to Defendants and
12 Defendants' successors, assigns, officers, agents, servants, employees, representatives, and all
13 other persons in active concert or participation with Defendants.

14 6.3 Within seven (7) days following the entry of this Judgment, Defendants shall
15 inform all successors, assigns, transferees, officers, agents, servants, employees, representatives,
16 and all other persons or entities in active concert or participation with Defendants or with the
17 business entities named as Defendants in the Complaint of the terms and conditions of this
18 Judgment and shall direct those persons and/or entities to comply with this Judgment.

19 **CIVIL PENALTIES**

20 6.4 The Court orders Defendants LA Investors, LLC, and Roberto Romero, a/k/a Juan
21 Roberto Romero Ascencio, to jointly and severally pay a civil penalty to the State in the amount
22 of \$2,569,980 pursuant to RCW 19.86.140. This amount is based on a penalty of \$10 for each of
23 Defendants' 256,998 deceptive solicitations sent to Washington consumers between June 2012
24 and February 2016.

25 6.5 In determining the appropriate amount for a civil penalty, the Court finds that
26 Defendants repeatedly committed the same violations of the CPA through transactions with

1 thousands of consumers in Washington. This civil penalty will eliminate any benefits derived by
2 the Defendants from their deceptive practices, and also will vindicate the authority of the
3 Consumer Protection Act to protect Washington consumers from unfair and deceptive acts.

4 6.6 In assessing the appropriate amount of civil penalties, the Court also finds that
5 Defendants LA Investors, LLC, and Roberto Romero, a/k/a Juan Roberto Romero Ascencio,
6 acted in bad faith. The acts and practices described herein were not isolated instances of
7 misjudgment, but rather, an intentional and deliberate practice perpetuated between June 2012
8 and February 2016. Defendants' violations caused substantial injury to the public and as early as
9 2013 Defendants were put on notice by Plaintiff that the Local Records Office solicitation had
10 the capacity to deceive. Defendants nevertheless continued to disseminate thousands of
11 solicitations in Washington.

12 RESTITUTION

13 6.7 The Court orders Defendants LA Investors, LLC, and Roberto Romero, a/k/a Juan
14 Roberto Romero Ascencio, to jointly and severally pay pursuant to RCW 19.86.080(2),
15 restitution in an amount equal to all fees received from (and not previously refunded to) any and
16 all Washington consumers who responded to Defendants' solicitations sent between June 1,
17 2012, and February 12, 2016. Defendants shall bear all costs for the administration of the
18 restitution payments. In no event shall any costs associated with payment of restitution fall to
19 Plaintiff. In the event that any amount designated as restitution is rejected by an eligible
20 consumer or remains otherwise unpaid as provided in this Judgment, such monies shall revert to
21 Defendants after Defendants have paid all third party claims administrator costs and all monies
22 related to consumer restitution.

23 6.8 The Court orders that restitution shall be administered as follows.

24 6.9 Within 45 days of the Entry of this Judgment, Defendants must retain a nationally
25 recognized claims administrator to operate the claims process. Defendants are required to
26 receive approval from the State before retaining the claims administrator, which shall not be

1 | unreasonably withheld. The parties shall then file a motion for approval of the claims
2 | administrator with the Court.

3 | 6.10 Defendants are responsible for all costs and fees associated with retaining the
4 | nationally recognized claims administrator.

5 | 6.11 Within 10 days of the Court's entry of approval of the claims administrator,
6 | Defendants must transmit the full amount of restitution, \$856,981, to be held in trust by the
7 | claims administrator (the "Restitution Fund"). The amount of restitution is calculated by
8 | reducing the number of Washington consumers who remitted payment in response to
9 | Defendants' solicitation (9,695) by 66 (those who were issued refunds). Therefore, the amount
10 | of restitution is \$856,981 (9,629 x \$89). Defendants shall have no interest, right, title, ownership,
11 | privilege or incident of ownership, or authority in regard to the Restitution Fund and shall have
12 | no right to alter, amend, revoke or terminate the Restitution Fund. The claims administrator is
13 | not authorized to pay or distribute any money from the Restitution Fund unless specifically
14 | authorized by this Judgment or a later order of the Court.

15 | 6.12 Within 10 days of the Court's entry of approval of the claims administrator,
16 | Defendants must provide the claims administrator and the State a current, verified list of all
17 | Washington consumers who purchased Defendants' product along with a list of those that have
18 | received a refund and the amount of the refund. Washington consumers will be eligible to
19 | receive restitution in the amount of the difference between the amount they paid and any refund
20 | they received from Defendants.

21 | 6.13 For the entire period of the restitution payment process, the claims administrator
22 | shall maintain a website with the terms and conditions of this Judgment. The website must be in
23 | both English and Spanish.

24 | 6.14 For the entire period of the restitution payment process, the claims administrator
25 | will offer a 1-800 number whereby consumers can call to receive more information regarding the
26 |

1 restitution mechanism. The 1-800 number must have operators available to assist consumers in
2 English and Spanish.

3 6.15 The claims administrator shall verify all addresses on Defendants' customer list
4 that will be used for restitution through a nationally recognized third-party vendor. This must be
5 completed within 40 days of the Court's entry of approval of the claims administrator, but this
6 deadline may be extended for good cause.

7 6.16 The Court directs the claims administrator to send one mailing to the Washington
8 consumers who are eligible for restitution. This mailing will be a letter notifying consumers of
9 their right to restitution pursuant to the direction of the Thurston County Superior Court. This
10 mailing must list a 1-800 telephone number that consumers may call with questions about the
11 restitution process. This mailing must be sent within 70 days of the Court's entry of approval of
12 the claims administrator, but this deadline may be extended for good cause. The mailing must
13 contain the following language:

14 Pursuant to a judgment entered by the Thurston County Superior Court in the
15 case of the State of Washington vs. LA Investors, LLC, doing business as
16 "Local Records Office" (Thurston County Case Number 13-2-02286-6), please
17 find an enclosed check for \$89. This amount serves as a refund for the amount
18 you paid to Local Records Office in response to a solicitation sent by them that
19 you may have believed originated from the government. This refund was
20 ordered by the Thurston County Superior Court after it determined that the
21 Local Records Office mailer violated the Washington Consumer Protection Act
22 by being deceptive and creating the net impression that it originated from a
23 government agency. If you have questions about this check, please contact [the
24 1-800 number set up by the claims administrator].
25
26

1 6.17 The mailing will contain a check in the amount of \$89 for each consumer who
2 purchased Defendants' product but did not receive a refund. The letter must be on Washington
3 State Attorney General letterhead.

4 6.18 In the event that there are any mailings that are returned as undeliverable due to an
5 incorrect address or for any other reason, the claims administrator, within 30 days of such return,
6 shall make all reasonable efforts to locate and contact the consumer, which must include a search
7 of commercial databases for current addresses and/or contact information for the consumer. The
8 claims administrator will mail the mailing to any newly discovered address.

9 6.19 All disbursements distributed by the claims administrator shall be made by check
10 that is valid for 90 days from issuance. The claims administrator shall advise, by mail and email
11 (if available), each consumer to whom such checks were issued if such check has remained un-
12 cashed for more than 60 days. The consumer may, if they contact the claims administrator
13 within 45 days thereafter, have a restitution check reissued, which will be valid for 45 days.

14 6.20 The claims administrator shall provide to Defendants and the State a monthly
15 report that provides the following information: (a) the amount of monies paid into and remaining
16 in the Restitution Fund; (b) total amount of refunds paid (including the name and address of each
17 who successfully received a refund); (c) the number of checks cashed by eligible consumers; and
18 (d) the name(s) and addresses of each consumer to whom the mailer was sent and was later
19 returned as undeliverable. The claims administrator shall provide, upon request by the State, all
20 documentation and information necessary for the State to confirm compliance with this
21 Judgment.

22 6.21 In the event that 1) a consumer fails to cash his or her check and fails to contact
23 the claims administrator in accordance with Paragraph 6.19, or 2) the claims administrator, after
24 a good faith attempt, cannot locate a consumer in accordance with Paragraph 6.18, ownership of
25 any consumer's respective \$89 entitlement will revert to Defendants in accordance with
26 Paragraph 6.7.

1 by the State as detailed in the State's Motion and supporting Declarations were reasonable and
2 appropriate. The Court did not make any upward or downward lodestar adjustment. However,
3 having considered the Parties' respective briefings related to costs and fees, the Court reduced
4 the number of hours requested by Plaintiff for the work of Investigator Mark Porter by 11.7
5 hours. Such reduction is reflected in the \$157,403.20 referenced above.

6 6.32 The State has incurred costs in the amount of \$19,903.53. The Court finds that the
7 costs detailed in the State's Motion and supporting Declarations were reasonable and necessary
8 for the investigation and litigation of this matter. However, having considered the Parties'
9 respective briefings related to costs and fees, the Court reduced the costs requested by Plaintiff
10 by \$500. Such reduction is reflected in the \$19,903.53 referenced above.

11 6.33 All monies payable to the State pursuant to this Order shall be paid by a check
12 payable to "Attorney General-State of Washington" and sent to the Office of the Attorney
13 General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite
14 2000, Seattle, Washington 98104-3188.

15 **ENFORCEMENT**

16 6.34 Violation of any of the injunctions contained in this Judgment, as determined by
17 the Court, shall subject the Defendants to a civil penalty of up to \$25,000.00 per violation
18 pursuant to RCW 19.86.140.

19 6.35 Violation of any of the terms of this Judgment, except for failure to make the
20 monetary payments set out above, as determined by the Court, shall constitute a violation of the
21 Consumer Protection Act, RCW 19.86.020.

22 6.36 This Judgment is entered pursuant to RCW 19.86.080. Jurisdiction is retained for
23 the purpose of enabling any party to this Judgment with or without the prior consent of the other
24 party to apply to the Court at any time for enforcement of compliance with this Judgment, to
25 punish violations thereof, or to modify or clarify this Judgment.
26

1 6.37 Under no circumstances shall this Judgment or the names of the State of
2 Washington or the Office of the Attorney General, Consumer Protection Division, or any of its
3 employees or representatives be used by Defendants, or Defendants' agents or employees, in
4 connection with the promotion of any product or service or an endorsement or approval of
5 Defendants' practices.

6 6.38 Nothing in this Judgment shall be construed as to limit or bar any other
7 governmental entity or consumer from pursuing other available remedies against Defendants.

8 **DISMISSAL AND WAIVER OF CLAIMS**


9 6.39 Upon entry of this Judgment, all claims in this matter, not otherwise addressed by
10 this Judgment are dismissed.

11 DATED this 3rd day of May, 2016.

12
13 
14 THE HONORABLE MARY SUE WILSON

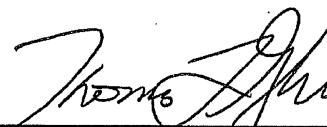
15 Presented by:

16 ROBERT W. FERGUSON
17 Attorney General

18 
19 JOHN A. NELSON, WSBA #45724
20 Assistant Attorney General
21 Attorneys for Plaintiff State of Washington

~~Approved for Entry and as to Form,~~
Notice of Presentation Waived:

BARRETT & GILMAN

18 
19 THOMAS L. GILMAN, WSBA #8432
20 AMY C. HEVLY, WSBA #23162
21 Attorneys for Defendants

CARNEY BADLEY SPELLMAN

August 23, 2017 - 3:00 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94785-6
Appellate Court Case Title: State of Washington v. The Mandatory Poster Agency Inc, et al.
Superior Court Case Number: 14-2-17437-3

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