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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

PUBLISHERS CLEARING HOUSE,

Defendant.

NO. 99-2-09352-6SEA

SUPPLEMENTAL  
CONSENT DECREE

[Clerk's Action Required]

**JUDGMENT SUMMARY**

Judgment Creditor:

State of Washington

Judgment Debtor:

Publishers Clearing House

Judgment Amount:

*See Section VII. (To be paid to  
Participating States in accordance with  
Section VII.)*

Post Judgment Interest Rate:

12%

Attorney for Judgment Creditor:

Shannon E. Smith  
Assistant Attorney General

Attorneys for Judgment Debtor:

Thomas L. Boeder  
Sarah J. Crooks  
Perkins Coie LLP

This matter is before the Court on the parties' stipulation for entry of a Supplemental Consent Decree. The Court has reviewed the Supplemental Consent Decree and concludes good cause has been shown to enter this Supplemental Consent Decree (hereafter Supplemental Decree).

## I. RECITALS

1.1 In approximately January 1999 or thereafter a number of States, including the State of Washington (the "State"), filed claims against Defendant Publishers Clearing House, (now a New York limited liability company, "PCH") under their consumer protection laws. Approximately one-half of the States settled and resolved their claims with PCH by entering into a Consent Judgment (a similar version was filed in each state on the same day) in August 2000 (hereinafter the "2000 Consent Judgment".) In Washington, the State and Publishers Clearing House entered into a Consent Decree on August 22, 2000; any reference to the "2000 Consent Judgment" shall mean the August 22, 2000 Consent Decree entered in this matter.

1.2 The remaining States resolved their claims with PCH by entering into a separate Consent Judgment (a similar version was filed in each state) in July/August 2001 (the "2001 Consent Judgment").

1.3 Since the entry of the Consent Judgments various States from both groups have monitored PCH's compliance with these Consent Judgments. As a result of this compliance monitoring the states listed in Schedule A hereto (the "Participating States")<sup>1</sup> have discussed with PCH various instances when the Participating States contend PCH has violated the Consent Judgments. As a result of those discussions PCH has in some instances voluntarily discontinued certain mailings.

1.4 PCH denies it has violated the Consent Judgments and denies any liability or wrongdoing.

1.5 In the interest of resolving and forever discharging any claims up to the date of filing this Supplemental Decree that the State has for any alleged violation of the August 22, 2000 Consent Decree the parties enter into this Supplemental Decree.

Accordingly, IT IS ADJUDGED, ORDERED, and DECREED:

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<sup>1</sup> The Participating States are led by an Executive Committee (hereafter "EC") of States: Alaska, Colorado, Nevada, North Carolina, Oregon, Pennsylvania, Vermont and Wisconsin.

1                                   **II.     SCOPE OF SUPPLEMENTAL JUDGMENT**

2           2.1     The terms of the 2001 Consent Judgment and 2000 Consent Judgment remain in  
3 full force and effect, unless otherwise specified in this Supplemental Decree. All terms and  
4 definitions used herein shall have the same meaning as were used in the Consent Judgments.  
5 As used in this Supplemental Judgment, the term "Consent Judgments" shall mean the 2001  
6 Consent Judgment and the 2000 Consent Judgment, together, and the term "Consent  
7 Judgment" shall refer to the August 22, 2000 Consent Decree entered in the State.

8                                   **III.     ADDITIONAL CONSUMER PROTECTIONS**

9           3.1     The following terms shall take effect on a date (the "Effective Date") that is one  
10 hundred twenty (120) days after the date of entry of this Supplemental Decree. In the event of  
11 any conflict or inconsistency between the 2001 Consent Judgment, the 2000 Consent  
12 Judgment, and this Supplemental Decree, this Supplemental Decree shall control.

13                                   **1.     Entry/Order**

14           3.1.1 Paragraph 3.3T of the Consent Judgment is amended by adding  
15 subparagraphs, each to be numbered sequentially, to follow the existing paragraph in the  
16 Consent Judgment, as follows:

17                   1.     PCH shall separate Order-related and Sweepstakes-related  
18 portions of the form with a double line, and display the disclosures required by clause (I) (a  
19 statement that discloses that no purchase is necessary to enter such sweepstakes) and (II) (a  
20 statement that discloses that a purchase will not improve an individual's chances of winning)  
21 of 39 U.S.C.A. 3001(k)(3)(A)(ii).

22                               (i)     For customers with 3 or more paid orders in any 2-month  
23 period within the preceding 2 years, between the two dividing lines, with a Clear and  
24 Conspicuous reference to the location of the Sweepstakes Facts appearing in the Order-related  
25 portion of the form either immediately above or immediately below the line separating such  
26

1 messages from the Order-related portion of the form, as applicable, with no intervening copy  
2 or graphics; and

3 (ii) For all others, in the same manner or in a box adjacent to  
4 the order boxes (or similar order device), with a Clear and Conspicuous reference to the  
5 location of the Sweepstakes Facts appearing immediately adjacent to such messages with no  
6 intervening copy or graphics.

7 The double lines shall extend across the entire page, the lines shall be  
8 solid, and the federal disclosures shall be Clear and Conspicuous. The Sweepstakes-related  
9 portion shall not include any Order-related information or requests to order merchandise.  
10 Instructional copy relating to the location of Sweepstakes stamps or other Sweepstakes  
11 interactions on the Sweepstakes Entry Form shall be limited to that which is necessary to  
12 complete the Sweepstakes entry, and such instructions along with everything else in the  
13 Sweepstakes-related portion shall not refer to in any way or by reference or arrows point to the  
14 Order-related portion.

15 2. Similarly the Order-related portion of a combined Entry/Order  
16 form shall be completely separated from and not refer to in any way the Sweepstakes-related  
17 portion or to entering the Sweepstakes or winning a Prize.

18 3. Non-Order entrants shall not be required to interact with the  
19 Order-related portion in any way to enter, including affixing any stamp or checking any box in  
20 the Order-related portion.

21 4. The Order-related portion shall not include pre-checked boxes  
22 that relate to merchandise offers or ordering, and any request in the Order-related portion for  
23 product interest information shall be only in the Order-related portion of the combined  
24 Entry/Order form. There shall be no request for product interest information in the  
25 Sweepstakes-related portion.  
26

1                   5.       Instructional copy (confined within the Sweepstakes-related  
2 portion) may tell the Recipient to return the form by the deadline date, but shall not state that  
3 the recipient must or should return the entire form to enter.

4                               **2.       Order History/Entry History**

5                   3.1.2 Paragraph 3.3BB of the Consent Judgment is amended by adding a  
6 paragraph to follow the existing paragraph in the Consent Judgment, as follows:

7                   1.       An act or practice deemed to violate this section includes using  
8 Sweepstakes Communications which contain information relating to a Recipient's Order  
9 history and a Recipient's Entry history on the same side of one document or which convey  
10 information relating to a Recipient's Order history and Entry history by using titles or text that  
11 contain the same or substantially the same wording. Neither Entry nor Order "history" nor  
12 "information relating to" Entry or Order history shall be deemed to refer to generalized  
13 statements referring to or acknowledging a Recipient's status as a previous customer or  
14 previous entrant into PCH sweepstakes.

15                               **3.       Identifying Characteristics/Key Codes/Prize Confusion**

16                   3.1.3 Paragraph 3.3D of the Consent Judgment is amended by adding a  
17 sentence followed by subparagraphs, each to be numbered sequentially, to follow the existing  
18 paragraph in the Consent Judgment, as follows: "An act or practice deemed to violate this  
19 section includes:

20                   1.       Using a Recipient's initials, personally identifying number or  
21 other personally identifying information to Misrepresent that the Recipient has been specially  
22 selected or is in a better position to win a Prize than other timely entrants with the same  
23 characteristics. Notwithstanding the previous sentence, PCH may tell a customer what unique  
24 number he or she has been assigned in a sweepstakes to identify the customer. Prohibited  
25 terms include 'key code.'

1                   2.       Representing in a Sweepstakes Communication that a person  
2 residing in a particular geographic area or having a particular characteristic has an enhanced  
3 status or is more likely to win than other timely entrants residing in the same area or any other  
4 geographic area or sharing the same personal characteristics unless such is the case.

5                   3.       Combining references in any Sweepstakes Communication to  
6 different Prizes or Sweepstakes in such a way as to Misrepresent the likelihood of winning any  
7 such Prize or Sweepstakes.

8                   4.       Making any reference in a Sweepstakes Communication to a  
9 particular Sweepstakes or Prize in such a manner as to Misrepresent the likelihood of winning  
10 any other Sweepstakes or Prize.

11                  5.       Making a Representation in a Sweepstakes Communication that  
12 combines references to more than one Sweepstakes or Prize without also identifying the  
13 giveaway number or other uniquely identifying term for each.”

14                                   **4.       Use Of Word Guarantee**

15                  3.1.4   Paragraph 3.3M of the Consent Judgment is amended to add a sentence  
16 to follow the existing subparagraphs in the Consent Judgment, as follows: “An act or practice  
17 deemed to violate this section includes any term that Misrepresents that the Recipient has an  
18 enhanced status or position within a Sweepstakes superior to other timely entrants to describe  
19 any such status or position, including, but not limited to, use of the word ‘guarantee’ or any  
20 variant regarding the Recipient in relationship to a Sweepstakes or Prize.”

21                               **5.       Committees/Boards**

22                  3.1.5   Paragraph 3.3F of the Consent Judgment is amended by adding the  
23 following: “Without in any way limiting the foregoing, the following acts or practices are  
24 deemed to violate this section:  
25  
26

1                   1.       Use of the terms 'Winner Selection Committee' or 'Winner  
2 Search Party' or any other term that includes the word 'winner' to refer to any committee or  
3 board that plays a role in the conduct of a Sweepstakes.

4                   2.       Representing that there is a board, office, committee or other  
5 entity that determines the winner of a Sweepstakes unless such is the case.

6                   3.       Making any reference to the 'Board of Judges' other than in the  
7 Official Rules.

8                   4.       For a period of three (3) years following the Effective Date,  
9 using a letter, notice, memorandum or envelope that is or purports to be from the 'Office of  
10 Contests' or the 'Department of Contests' (or any similar term for an office or department that  
11 includes the word 'Contest'), or is signed by an individual identified therein as a member  
12 thereof, that contains the Recipient's name, address or other personally-identifiable  
13 information.

14                  5.       Using any other letter, notice or memorandum that is or purports  
15 to be from such an office or department referenced in subparagraph 4 above that:

16                   i.       Does not include a Clear and Conspicuous statement as to  
17 the role and responsibilities of the office or department;

18                   ii.       Represents that the office or department selects the  
19 winner of any Sweepstakes; and

20                   iii.       Does not include a statement to the effect that PCH  
21 doesn't know who the winner is yet."

22                   **6.       Customer-Only Sweepstakes**

23                   3.1.6 Section 3.3EE of the Consent Judgment is amended by adding the  
24 following additional requirements, to be numbered sequentially to follow the existing  
25 subparagraphs in the Consent Judgment:  
26

1                   5.       Notwithstanding anything contained in clause (3) above,  
2 Customer-Only Sweepstakes will be mailed no more than:

3                   i.       Twice a year, for a period of no more than two (2) weeks  
4 in each instance, plus

5                   ii.       Three times a year, for single mailings; provided that the  
6 mail volume for any such two-week period or single mailings is consistent with PCH's normal  
7 mailing practices and patterns and does not represent a significant increase over normal  
8 volumes in comparable periods.

9                   6.       Any Sweepstakes Communication that includes a Customer-  
10 Only Sweepstakes shall state clearly that no purchase is necessary from that mailing in order to  
11 enter the Customer-Only Sweepstakes included in that bulletin.

12                   **7.       Duplicate Magazine Subscriptions**

13                   3.1.7 PCH shall, as soon as practicable but in any event no later than eighteen  
14 months after the date of entry of this Supplemental Judgment, implement procedures designed  
15 to identify instances in which a person described in paragraph 6.1.1(a)(i) of Article VI below  
16 places duplicate magazine subscription orders through PCH during any rolling twelve calendar  
17 month period, checked not less frequently than quarterly. Promptly upon identification of any  
18 such instance, PCH shall cancel such duplicate subscription orders to the extent that they result  
19 in such a person having a subscription to a title for a period in excess of three years.

20                   **IV.       SPECIAL COMPLIANCE COUNSEL; OMBUDSPERSON**

21                   4.1       **Special Compliance Counsel.** Notwithstanding the time limitation set forth in  
22 the 2001 Consent Judgment, PCH shall extend the engagement term of the Special Compliance  
23 Counsel, with all the powers, duties and responsibilities set forth in section 52(a) of the 2001  
24 Consent Judgment, for an additional period of three years from and after the date of entry of  
25 this Supplemental Judgment.



1           4.2   **Ombudsperson.** PCH shall engage an attorney of national stature with a  
2 consumer protection background (who may be Jeffrey A. Modisett, Esq., and the Bryan Cave  
3 law firm of which he is a member) for a period of three years from the date of entry of this  
4 Supplemental Judgment to work with Special Compliance Counsel and to be the  
5 “Ombudsperson” with respect to PCH’s compliance with the injunctive provisions of the  
6 Consent Judgment and this Supplemental Judgment.

7           4.2.1 General Duties and Responsibilities. The Ombudsperson shall have the  
8 following general duties and responsibilities:

9                   a.       Within thirty (30) days after the date of entry of this  
10 Supplemental Judgment, to meet with Special Compliance Counsel to review its promotion  
11 review procedures and to examine Special Compliance Counsel’s approach to compliance with  
12 the Consent Judgments.

13                   b.       Within sixty (60) days after the date of entry of this  
14 Supplemental Judgment, to undertake and complete an examination of the actual conduct and  
15 operation of the promotion review process, and to report to PCH and Special Compliance  
16 Counsel (i) any instance or respect in which one or both of them are not, in the view of the  
17 Ombudsperson, following the established promotion review procedures and (ii) any  
18 recommendations he or she may have for improvements of and enhancements to the process.

19                   c.       At all times, to be available to the Attorney General, if he or she  
20 has issues with or objections to any promotional mailing package or practice, to transmit such  
21 issues or objections to PCH and Special Compliance Counsel and to explain to PCH and  
22 Special Compliance Counsel the Attorney General’s point of view.

23                   d.       PCH shall provide the Ombudsperson with current copies of its  
24 promotional mailings and such additional information or materials as the Ombudsperson may  
25 reasonably request to fulfill his or her responsibilities hereunder.

1                   4.2.2 Quarterly Review of High Volume Mailings. The Ombudsperson shall  
2 review (A) the ten most widely distributed PCH promotional packages determined by volume  
3 and (B) two less widely distributed (including test mailings) PCH promotional packages, in  
4 each case as mailed to persons appearing on its records with an address in the Participating  
5 States, during a calendar quarter for compliance with the Consent Judgments and this  
6 Supplemental Judgment, in accordance with the following procedures:

7                   a.       As soon as practicable, but no later than fifteen (15) days after  
8 the end of each calendar quarter, PCH shall provide the Ombudsperson with a printed sample  
9 of each of the promotional mailing packages to be reviewed for that quarter.

10                  b.       As soon as practicable, but no later than thirty (30) days after  
11 receipt of such printed samples, the Ombudsperson shall review or cause to be reviewed such  
12 packages to determine whether or not they are in compliance with the Consent Judgments and  
13 this Supplemental Judgment.

14                  c.       The Ombudsperson shall report to Special Compliance Counsel  
15 and PCH any instance(s) in which such packages are not, in his or her view, in compliance  
16 with the Consent Judgments and this Supplemental Judgment.

17                  d.       Special Compliance Counsel shall have thirty (30) days after  
18 receipt of any such report to make such written or oral submission(s) to the Ombudsperson as it  
19 may think fit and proper (if any) to rebut any assertion by the Ombudsperson of non-  
20 compliance by PCH.

21                  e.       If, after notice and due consideration of any such submission by  
22 Special Compliance Counsel, the Ombudsperson is not satisfied that the promotional mailing  
23 package in question is in compliance with the Consent Judgments and this Supplemental  
24 Judgment, the Ombudsperson shall promptly notify Special Compliance Counsel and PCH.

25                  f.       In the event that PCH wishes to mail a promotional mailing  
26 package as to which the Ombudsperson has made such a finding, PCH shall promptly provide

1 the Ombudsperson with a schedule showing the mailing date and last change date (i.e., the last  
2 step in promotional mailing package development before the file is locked down for pre-press  
3 production) of the next and all subsequent mailings (if any) for which that package is  
4 scheduled.

5 g. If PCH fails either to withdraw the package from consideration  
6 for future mailings, or to make such modifications thereto as shall be satisfactory to the  
7 Ombudsperson and Special Compliance Counsel, provided the finding is first communicated to  
8 PCH prior to the last change date for the mailing in question, the Ombudsperson shall promptly  
9 notify the Attorney General of that fact and provide the Attorney General with a printed  
10 sample of the promotional mailing package in question and a statement of the basis for the  
11 Ombudsperson's determination of non-compliance.

12 4.2.3 Semi-Annual Reports. The Ombudsperson shall provide the Attorney  
13 General with a semi-annual report within thirty (30) days after the end of the first six-month  
14 period following the Effective Date and after each of the following three (3) such 6-month  
15 periods, in each case covering the immediately preceding 6-month period, which reports will  
16 describe generally his activities in the capacity of Ombudsperson during that period, including  
17 a statement of the number of mailings reviewed, the number of instances in which PCH  
18 objected to a finding by the Ombudsperson and the number of instances (if any) in which PCH  
19 rejected any findings of the Ombudsperson under paragraph 4.2.2(g) of this Article IV.

20 4.2.4 Review Frequency. No promotional mailing package need be reviewed  
21 for compliance by the Ombudsperson more frequently than once in a calendar year. Any  
22 promotional mailing package that would otherwise be required to be submitted to the  
23 Ombudsperson for review in respect of any calendar quarter under the preceding paragraph  
24 need not be so submitted if that package, or a package substantially the same as that package in  
25 all material respects, had been reviewed by the Ombudsperson without a finding of non-  
26

1 compliance with the Consent Judgment or this Supplemental Judgment, after going through the  
2 procedures set forth above, in respect of any of the three (3) preceding calendar quarters.

3           4.2.5 Confidential Treatment of Reports. All reports to the Attorney General  
4 by the Ombudsperson hereunder shall be deemed to be confidential information subject to such  
5 protections as may be accorded to such information under the laws, including FOIA laws, of  
6 the State. The State acknowledges that the undertaking to provide notices and reports to the  
7 Attorney General set forth herein is given for the purposes of settlement and that the reports of  
8 neither Special Compliance Counsel nor the Ombudsperson shall constitute any admission of  
9 wrongdoing by PCH nor may they be introduced into evidence in any proceeding by the  
10 Attorney General or the State in the event of any litigation between the State and PCH or any  
11 other person whatsoever. Nothing that Special Compliance Counsel or the Ombudsperson  
12 expresses or concludes may be used by any person as evidence for or against PCH in any  
13 dispute or litigation involving the mailings.

14           4.2.6 Fees and Expenses. PCH shall be responsible for and shall promptly  
15 pay the reasonable fees and disbursements of the Ombudsperson incurred in connection with  
16 the performance of his or her duties and responsibilities hereunder.

## 17           **V. REVIEW OF SWEEPSTAKES COMMUNICATIONS**

18           5.1 PCH shall provide the Office of the Attorney General upon letter of request to  
19 PCH or its counsel with a sample copy of any Sweepstakes Communication that is delivered  
20 by mail, e-mail and/or the Internet to persons appearing on its records as having an address in  
21 the State. The Attorney General may make such a request at any time. Receipt and/or review  
22 of sample Sweepstakes Communications by the Attorney General shall not constitute approval  
23 of or agreement to PCH's use of the Sweepstakes Communication(s); and

24           5.2 PCH shall take into account not only its own quality control and the  
25 recommendations of its legal counsel but also the input from Special Compliance Counsel and  
26 the Ombudsperson and in the event of any report from the Ombudsperson as to possible non-

1 compliance shall carefully review its Sweepstakes Communications, including the one at issue,  
2 to ensure compliance with the judgments as contemplated herein.

3 **VI. PCH'S HIGH ACTIVITY CUSTOMER (HAC) PROGRAM**

4 6.1 PCH shall in addition to complying with the current provisions of section 46  
5 through 52 of the 2001 Consent Judgment and Article IV of the 2000 Consent Judgment,  
6 institute the following enhancements to the "High Activity Customer" programs prescribed by  
7 these paragraphs:

8 6.1.1 Quarterly Identification of Customers Subject to Survey. PCH shall,  
9 within thirty (30) days after the end of each calendar quarter, identify each person appearing on  
10 its customer file with an address within the State that meets any of the following criteria:

- 11 a. The customer
- 12 i. has paid Orders of \$500 or more in the preceding quarter  
13 from Sweepstakes Communications, and
- 14 ii. is determined to be 65 years of age or older (or his or her  
15 age is unknown), and
- 16 iii. is found to have a higher than average probability of  
17 being unpromotable through the application of the regression risk model shown to the EC  
18 December 10, 2007, a copy of which has been provided to each Participating State requesting  
19 the same, or a more accurate version (hereinafter the "Regression Risk Model"); or

20 b. The customer has paid Orders of \$900 or more in the triggering  
21 quarter from Sweepstakes Communications; or

22 c. The customer is a "Spiking Customer." The term "Spiking  
23 Customer" means a person who meets all of the following criteria:

- 24 i. The person has been a PCH customer for at least five (5)  
25 consecutive calendar quarters;
- 26

1                   ii.     The person has paid Orders of five hundred dollars  
2 (\$500) or more in the triggering quarter from Sweepstakes Communications; and

3                   iii.     The aggregate amount of such paid Orders during the  
4 triggering quarter is more than 2.5 standard deviations above the average amount of their paid  
5 Orders during the four (4) consecutive calendar quarters immediately preceding the triggering  
6 quarter.

7           PCH shall not select any such identified customer for the receipt of Sweepstakes  
8 Communications unless and until the Special Compliance Counsel determines that such  
9 Sweepstakes Communications are appropriate for the customer via the PCH survey under  
10 Section 46(a) of the 2001 Consent Judgment and Article IV of the 2000 Consent Judgment.  
11 The Quarterly Identification process described in this paragraph is not subject to a 3-year  
12 limitation and will continue indefinitely. As used in this paragraph, the expression "higher  
13 than average probability" means any model score greater than one (1) standard deviation above  
14 the mean for the score distribution of the original model development population for the  
15 Regression Risk Model.

16                   6.1.2 Annual Identification of 500 Customers Most Likely to be  
17 Unpromotable. PCH shall, within sixty (60) days after the end of each calendar year, identify  
18 each person that meets all of the following criteria:

19                   a.     The person appears on PCH's customer file with an address  
20 within the Participating States; and

21                   b.     The person has paid Orders of \$1000 or more in the preceding  
22 calendar year from Sweepstakes Communications; and

23                   c.     The person is among the 500 customers from among all those  
24 resident in the Participating States, taken as a whole, meeting the criteria in subparts (a) and (b)  
25 of this paragraph 6.1.2 who are found to have the highest probability of being unpromotable  
26 through the application of the Regression Risk Model.

1 PCH shall not select any such identified customer for the receipt of Sweepstakes  
2 Communications unless and until the Special Compliance Counsel determines that such  
3 Sweepstakes Communications are appropriate for the customer via the PCH survey under  
4 Section 46(a) of the 2001 Consent Judgment and Article IV of the 2000 Consent Judgment.

5 6.1.3 Annual Automatic Permanent Suppression. For a period of three years  
6 following the entry of this Supplement Consent Judgment, PCH shall annually apply the  
7 Regression Risk Model to each person appearing on its records with an address in the State  
8 who has paid Orders in the preceding year at or above \$3800.00 and, in lieu of surveying the  
9 person as mandated by section 46 of the 2001 Consent Judgment and Article IV of the 2000  
10 Consent Judgment, automatically permanently suppress all those who are found to have a high  
11 probability of being unpromotable.

12 a. This is a failsafe mechanism, and it is anticipated that no one will  
13 fail to be identified by the Quarterly Identification process before reaching the \$3800.00 annual  
14 level.

15 b. However, if twenty (20) or more persons from the Participating  
16 States, who should have been identified and suppressed by the Quarterly Identification process  
17 before reaching that level, reach the \$3800.00 level in the third year, PCH shall continue for an  
18 additional 3 years to apply the Regression Risk Model to persons at this dollar level in  
19 accordance with this section and shall automatically suppress the persons in lieu of surveying  
20 them under the annual survey program.

21 As used in this paragraph, the term "high probability" means any model score greater  
22 than one and eight tenths (1.8) standard deviations above the mean for the score distribution of  
23 the original model development population for the Regression Risk Model.

24 6.1.4 Regression Risk Model Improvements. PCH shall review the  
25 Regression Risk Model from time to time and make such improvements or adjustments therein  
26 as may be necessary to reflect recent transaction activity and so render the Regression Risk

1 Model more accurate. The States may retain, at their expense, an expert of recognized  
2 standing in the field to consult with PCH on the construction and application of the Regression  
3 Risk Model. PCH shall work in good faith with the State's expert and take into consideration  
4 any reasonable recommendations from the State's expert.

5                   6.1.5 Annual Minimum Number of Surveys to Be Completed by PCH.

6                   a. Annually, for each of the first three (3) Survey Years following  
7 the entry of this Supplemental Consent Judgment, PCH shall survey at least a Minimum  
8 Number of its customers in the Participating States. The Minimum Number shall be equal to  
9 the product of 16,000 multiplied by a percentage, the numerator of which is the population of  
10 the Participating States and the denominator of which is the population of the United States,  
11 according to the latest pronouncement by the United States Census Bureau, excluding from  
12 both the numerator and the denominator persons shown on PCH's records with an address in  
13 the State of Iowa. If the total number of persons identified for survey under section 46 of the  
14 2001 Consent Judgment and Article IV of the 2000 Consent Judgment and paragraphs 6.1.1  
15 (Quarterly Identification of Customers Subject to Survey), 6.1.2 (Annual Identification of 500  
16 Customers Most Likely to be Unpromotable) and 6.1.11b (Annual Letter Screening and  
17 Suppression), of this Article VI is less than the Minimum Number , PCH shall then survey  
18 additional customers as set forth in this paragraph to reach the Minimum Number.

19                   b. In order to reach the Minimum Number, if needed, PCH shall  
20 use the Quarterly Identification process to identify customers who had paid orders in the  
21 preceding quarter of less than \$500 in decreasing amounts and also meet the criteria in  
22 paragraph 6.1.1a of this Article VI, or from the pool of persons with \$1000 or more in paid  
23 Orders in the preceding year by increasing the number identified for survey under paragraph  
24 6.1.2 of this Article VI, as necessary to make up the shortfall. PCH shall assess the amount of  
25 any shortfall in reaching the Minimum Number each quarter on the basis of good faith  
26 projections for the year.



1                   c.       The term "Survey Year" means each successive period of four  
2 consecutive calendar quarters, the first such Survey Year commencing with the first full  
3 calendar quarter following the entry of this Supplemental Judgment and the second and third  
4 Survey Years commencing with the fifth and ninth calendar quarters, respectively, following  
5 that quarter.

6                   6.1.6 CPI Escalator.

7                   a.       The reference to "in this paragraph 52" in paragraph 46i of the  
8 2001 Consent Judgment is amended to "in this paragraph 46".

9                   b.       On January 1 of each calendar year after the date of entry of this  
10 Supplemental Consent Judgment, the paid Order Dollar Thresholds, within the meaning of  
11 Paragraph 46(i) of the 2001 Consent Judgment, or measuring amounts, within the meaning of  
12 Article IV of the 2000 Consent Judgment, for the HAC program set forth above shall be  
13 adjusted (upward or downward) (i) by the annual change in the consumer price index, and (ii)  
14 to exclude (A) one single item Merchandise Order of \$125 or more per quarter and (B) any  
15 single item Merchandise Order of \$500 or more (such amounts likewise to be adjusted upward  
16 or downward with the CPI), and the resulting amount shall be the new dollar threshold or  
17 measuring amount for that year.

18                  c.       CPI Escalator Freeze. Notwithstanding the provisions of  
19 paragraph 46(i) of the 2001 Consent Judgment and Article IV of the 2000 Consent Judgment,  
20 the paid Order Dollar Threshold or measuring amount for automatic suppression shall (i) be  
21 \$5500 for order activity in calendar year 2010, and (ii) together with the special \$3800.00/year  
22 figure in paragraph 6.1.3 of this Article VI, shall not be increased to take into account increases  
23 in the Consumer Price Index for three years, commencing with calendar year 2011. Also the  
24 dollar amounts for (A) Annual Identification of 500 Customers Most Likely to be  
25 Unpromotable and (B) spending of \$1000 triggering the Annual No Purchase Necessary Letter  
26

1 shall not be increased to take into account increases in the Consumer Price Index for three  
2 years, commencing with calendar year 2011.

3           6.1.7 High Activity Customer Survey. Communications shall be considered  
4 “appropriate” for a person if the Special Compliance Counsel determines by the survey  
5 contemplated by Section 46(a) of the 2001 Consent Judgment and Article IV of the 2000  
6 Consent Judgment that the person is (a) not generally confused or disoriented, (b) does not  
7 believe that buying shall help him/her win, and (c) is not making excessive purchases in  
8 relation to his or her means.

9           a. PCH and the EC, or so many of the Participating States on the  
10 EC as wish to participate in the endeavor, shall work in good faith on modifications to the  
11 existing High Activity survey to better assure that communications to High Activity Customers  
12 are appropriate in light of each customer’s individual circumstances measured against the  
13 above 3 prongs.

14           b. All survey modifications shall be undertaken in an effort to  
15 achieve the neutral and unbiased gathering of pertinent information, giving due regard to the  
16 need to identify and protect vulnerable individuals.

17           c. Recommendations for modifications shall be submitted to a firm  
18 of experts of recognized standing in the field with special experience with applied research and  
19 senior populations selected by PCH (which may be the firm of experts that designed the  
20 original survey) for consideration and rejection and/or implementation. PCH and the  
21 Participating States on the EC will provide their respective ideas and goals for the process in a  
22 single joint letter to the firm of experts.

23           d. In the event that the EC determines that the decisions of the firm  
24 of experts selected by PCH are unsatisfactory for any reason, the EC may select a second firm  
25 of experts of recognized standing in the field with special experience with applied research and  
26 senior populations to consider the matter. The States shall bear their own expense.

1 e. The cost of the firm of experts selected by the EC shall be borne  
2 by PCH, but shall not exceed fifteen thousand dollars (\$15,000) plus travel and out-of-pocket  
3 expense. If the two firms are unable to agree, PCH and the EC may jointly select a third firm  
4 of experts to consider the matter. The cost of any third firm of experts shall be borne jointly by  
5 PCH and such of the EC Participating States as choose to participate in this endeavor.

6 f. The work of the panel shall be completed within eighty (80) days  
7 of the matter's being assigned to the panel and then PCH and each Participating State in this  
8 Supplemental Judgment must then decide to accept the survey or take the matter to court. If  
9 the panel cannot reach agreement the matter may be taken to court by PCH or any Participating  
10 State in each State or the current survey left in place.

11 g. PCH and such EC Participating States shall exercise their best  
12 efforts to complete the survey review and revision project within six (6) months after the date  
13 of entry of this Supplemental Consent Judgment.

14 h. Should the parties decide to modify the survey in the future they  
15 may do so by stipulation.

16 i. PCH shall review the survey from time to time, in light of new  
17 information obtained in the conduct of the HAC program, and make such modifications and  
18 changes therein as shall appear to be necessary and proper to better assure the proper  
19 assessment of those being surveyed; provided that PCH shall not make any changes in the  
20 survey unless the same shall have been approved by Special Compliance Counsel and the  
21 Ombudsperson; and provided no material change arrived at in the survey modification process  
22 described in paragraphs a through g of this Section 6.1.7 will be changed by PCH for a period  
23 of three (3) years without the consent of the expert or experts engaged under paragraphs c  
24 and/or d of this Section 6.1.7, in addition to the consent of Special Compliance Counsel and  
25 the Ombudsman.  
26

1 j. PCH shall promptly provide copies on request of all completed  
2 surveys to the Attorney General's consumer protection office in the customer's state for all  
3 surveys resulting in a determination of "promotable." This provision shall not limit in any way  
4 the Attorney General's right to challenge such a determination. All surveys provided to the  
5 Attorney General by PCH hereunder shall be deemed to be supplied as confidential  
6 information subject to such protections as may be accorded to such information under the laws,  
7 including FOIA laws and other applicable open records statutes of the State. Nothing in this  
8 section shall prohibit a State from using information contained in or obtained as a result of any  
9 survey provided hereunder, with due regard for any sensitive content, for the purpose of  
10 assisting individual consumers or for enforcement purposes by the Attorney General. If an  
11 outside party other than someone the State is sharing information with seeks access to a survey  
12 or surveys, the State will notify PCH.

13 6.1.8 Survey Procedures

14 a. Survey Costs and Expenses. All costs and expenses of  
15 conducting HAC surveys to be borne exclusively by PCH.

16 b. No Incentives. Survey-takers shall have no incentive, whether in  
17 the form of compensation formulas or otherwise, to skew the results of any survey, or to avoid  
18 explaining the results of any survey.

19 c. Avoiding Undue Intrusiveness. A person who is surveyed and  
20 determined to be promotable need not be surveyed again for the next three (3) quarters  
21 following the quarter in which such determination is made, but shall be eligible for  
22 identification and survey in the ordinary course thereafter.

23 6.1.9 Avoiding the Resumption of Mailings. In order to better avoid a  
24 resumption of mailings to a High Activity Customer-suppressed individual due to minor  
25 variations in a person's name and address, PCH shall quarterly apply to its customer and  
26 suppression files, for persons appearing thereon with an address in the State:

1                   a.       The best name and address duplication identification and  
2 elimination technology and procedures available on commercially reasonable terms;

3                   b.       Weekly updates of the National Change of Address file provided  
4 by the United States Postal Service or other authorized service provider; and

5                   c.       Industry-standard address correction software certified by the  
6 United States Postal Service or other authorized service provider.

7                   6.1.10 Avoiding Inappropriate Reinstatement. No person who is surveyed and  
8 determined to be inappropriate for sweepstakes promotion pursuant to the HAC program  
9 described in the foregoing sections of this Article VI shall be reinstated to promotable status  
10 without the written consent of the Attorney General.

11                   6.1.11 Annual No Purchase Necessary Letter.

12                   a.       PCH shall mail to all persons appearing on its customer file with  
13 an address within the State and having paid Orders of one thousand dollars (\$1000) or more in  
14 any calendar year a non-promotional stand-alone letter reminding them of the “Buying Won’t  
15 Help You Win” and “No Purchase Necessary” messages, and including this message,  
16 conspicuously presented and in contrasting bold:

17                   ***“In fact, the majority of Publishers Clearing House winners did not submit an***  
18                   ***order with their winning entry.”***

19 Such mailing shall occur not more than 180 days after the end of each calendar year.

20                   b.       Annual Letter Screening and Suppression. The Annual No  
21 Purchase Necessary Letter shall include a specially created dedicated 800# number as a toll-  
22 free customer assistance hotline. Consumer calls to the customer assistance hotline, whether  
23 from customers themselves or from their friends and relatives, shall be screened by PCH’s  
24 representatives for warning signs, such as general confusion or a belief that a purchase is  
25 necessary, that would suggest a survey is in order. PCH shall promptly attempt to contact and  
26

1 survey any customer as to whom such warning signs are detected and shall permanently  
2 suppress such individual if appropriate in light of the survey criteria then applicable.

### 3 **VII. MONETARY PROVISIONS**

4 7.1 Upon execution of this Supplemental Judgment, PCH shall pay a total of Three  
5 Million Five Hundred Thousand Dollars (\$3,500,000.00) to the Participating States, to be  
6 divided among them as they shall in their discretion determine. Said payment shall be used by  
7 the Participating States for attorney's fees and other costs of investigation and litigation, or be  
8 placed in, or applied to, the consumer protection enforcement fund, consumer education,  
9 litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry  
10 leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney  
11 General for each Participating State.

### 12 **VIII. EFFECTIVE DATES**

13 8.1 High Activity Program. The provisions of Article VI shall be applied on the  
14 basis of paid Order activity in the first full calendar quarter after the date of entry of this  
15 Supplemental Judgment.

16 8.2 Additional Consumer Protections. The provisions of Article III shall become  
17 effective one hundred twenty (120) days after date of entry of this Supplemental Judgment.

18 8.3 Special Compliance Counsel and Ombudsman. The provisions of Articles IV  
19 and V shall become effective immediately upon entry of this Supplemental Judgment.

### 20 **IX. GENERAL AND ADMINISTRATIVE PROVISIONS**

21 9.1 No Modification of Obligations under Consent Judgment. Nothing herein is  
22 intended to or shall reduce, modify or mitigate in any way the compliance obligations of PCH  
23 under the Consent Judgment.

24 9.2 No Limitation of Consumer Rights and Remedies. Nothing herein is intended  
25 to or shall limit the rights of or remedies available to any consumer under the laws of the State.  
26

1           9.3    Preservation of Law Enforcement Action. Nothing herein precludes the  
2 Attorney General from enforcing the provisions of the Consent Judgment and this  
3 Supplemental Consent Judgment or pursuing any law enforcement action with respect to the  
4 acts or practices of PCH not covered by the Consent Judgment and this Supplemental Consent  
5 Judgment or any acts or practices of PCH conducted after the date of entry of this  
6 Supplemental Judgment (or, in the case of the Additional Consumer Protections in Article III  
7 hereof; after the Effective Date).

8           9.4    Compliance with Law; Applicable Law. Nothing herein relieves PCH of its  
9 duty to comply with applicable laws of the State nor constitutes authorization by the Attorney  
10 General for PCH to engage in acts and practices prohibited by such laws. This Supplemental  
11 Judgment shall be governed by the laws of the State.

12           9.5    Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney  
13 General of PCH's post or future Sweepstakes or other practices, and PCH shall not make any  
14 Representation contrary to the foregoing.

15           9.6    No Inducement. PCH acknowledges and confirms that no promise of any kind  
16 or nature whatsoever, other than the written terms hereof, was made to it to induce it to enter  
17 into this Supplemental Judgment, that it has entered into this Supplemental Judgment  
18 voluntarily, and that the Consent Judgment and this Supplemental Judgment constitutes the  
19 entire agreement between PCH and the State with respect to the subject matter hereof.

20           9.7    No Use of Settlement as Defense. PCH acknowledges that it is the Attorney  
21 General's customary position that an agreement restraining certain conduct on the part of a  
22 defendant does not prevent the Attorney General from addressing later conduct that could have  
23 been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly  
24 limited the enforcement options of the State or the Attorney General in that manner.  
25 Therefore, nothing herein shall be interpreted to prevent the State or the Attorney General from  
26 taking enforcement action to address conduct occurring after the date of entry of this

1 Supplemental Judgment that the Attorney General believes to be in violation of the law. The  
2 fact that such conduct was not expressly prohibited by the terms of the Consent Judgment or  
3 this Supplemental Judgment shall not be a defense to any such enforcement action.

4       9.8     Additional States. PCH's commitments in Section 6.1.1, Article VI, are based  
5 on the understanding that the Participating States would consist only of the states and the  
6 District of Columbia identified in Schedule A as "Participating States." PCH has stated, and  
7 the Participating States do not contest, that it cannot effectively administer or support an  
8 increase in surveys beyond these commitments and in particular is not in a position to expand  
9 this program to States other than the Participating States.

10       9.9     Release of Claims. The State acknowledges by its execution hereof that this  
11 Supplemental Judgment constitutes a complete settlement and release of all civil claims on  
12 behalf of the State against PCH, and all of its subsidiaries and affiliates, past and present, and  
13 their past and present members, officers, directors, employees, agents and servants, and the  
14 representatives of any of them, and the successors and assigns of each thereof (all such  
15 released parties shall be collectively referred to as the "Releasees"), with respect to all civil  
16 claims, causes of action, damages, fines, costs, and penalties which were asserted or could  
17 have been asserted under its consumer protection statutes and relating to or based upon the acts  
18 or practices which are the subject of the Consent Judgment and this Supplemental Judgment  
19 prior to the date of entry of this Supplemental Judgment (or, in the case of those relating to  
20 Sweepstakes Communications, prior to the Effective Date). The State agrees that it shall not  
21 proceed with or institute any civil action or proceeding based upon the above-cited consumer  
22 protection statutes against the Releasees, including but not limited to an action or proceeding  
23 seeking restitution, injunctive relief, fines, penalties, attorney's fees, or costs, for any  
24 Sweepstakes Communication disseminated prior to the Effective Date or for any other conduct  
25 or practice prior to the date of entry of this Supplemental Judgment which relates to the subject  
26 matter of the Consent Judgment or this Supplemental Judgment. Notwithstanding the



1 foregoing, the State or the Attorney General may institute an action or proceeding to enforce  
2 the terms and provisions of the Consent Judgment or this Supplemental Judgment or to take  
3 action based on future conduct by the Releasees.

4 9.10 Conversion Extension. The date upon which the Consent Judgment will  
5 terminate, and the Assurance of Discontinuance (AOD) referenced in paragraph 6.6 of the  
6 Consent Judgment shall take full force and effect, is extended to September 22, 2010.

7 9.11 Modification. PCH and the Attorney General may modify the requirements and  
8 obligations imposed by the Consent Judgment and this Supplemental Judgment at any time by  
9 written agreement. If PCH comes to believe in good faith at any time hereafter that any of the  
10 terms hereof are no longer necessary for the protection of consumers, on that they conflict with  
11 any federal, state or local laws, rules or regulations, or that they are unreasonably burdensome,  
12 it may request such a modification. The Attorney General shall consider any such request in  
13 good faith, and grant it on good cause shown, but shall not under any circumstances be  
14 obligated to grant any such request that it deems in good faith to be contrary to the public  
15 interest.

16 WHEREFORE, the parties request the Court enter this Supplemental Judgment.

17 DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

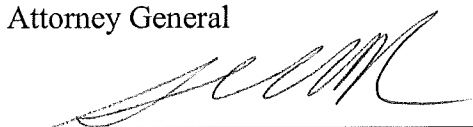
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19 \_\_\_\_\_  
JUDGE/COURT COMMISSIONER


20 Presented by:

Approved for Entry, Notice of Presentation  
Waived:

21  
22 ROBERT M. MCKENNA  
Attorney General

PERKINS COIE LLP

23  
24   
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Attorneys for Plaintiff State of Washington

25   
SARAH J. CROOKS, WSBA #35997  
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Attorneys for Defendant

Schedule A (Participating States)

1  
2 Alaska  
3 Arizona  
4 Colorado  
5 District of Columbia  
6 Delaware  
7 Florida  
8 Georgia  
9 Hawaii  
10 Idaho  
11 Illinois  
12 Maryland  
13 Michigan  
14 Minnesota  
15 Mississippi  
16 Missouri  
17 Nebraska  
18 Nevada  
19 New Mexico  
20 North Carolina  
21 North Dakota  
22 Oklahoma  
23 Oregon  
24 Pennsylvania  
25 Rhode Island  
26 South Carolina  
South Dakota  
Tennessee  
Texas  
Vermont  
Virginia  
Washington  
West Virginia  
Wisconsin

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