

IN THE IOWA DISTRICT FOR POLK COUNTY

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**STATE OF IOWA** ex rel. THOMAS J.  
MILLER, ATTORNEY GENERAL OF IOWA  
99ag25112

Plaintiff,

v.

**COURTESY HEALTH WATCH, INC.;**  
**MATT McFALL; WAYNE LORING; and**  
**CHARLIE JANKINS,**

Defendant.

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Equity No. CE 72307

**CONSENT JUDGMENT**

The Court, having been presented by Assistant Attorney General Steve St. Clair with this Consent Judgment and having reviewed the file in this matter, determines that final judgment should be entered herein, and finds as follows:

1. On July 9, 2013, Plaintiff State of Iowa ex rel. Thomas J. Miller, Iowa Attorney General, filed an Amended and Substituted Petition in Equity against the Defendants Courtesy Health Watch, Inc., Matt McFall, Wayne Loring, and Charlie Jenkins (collectively referred to hereafter as “the Defendants”) pursuant to Iowa Code § 714.16 (2013), the Iowa Consumer Fraud Act, and this Consent Judgment, which has been approved by Plaintiff and each of the Defendants, is intended to resolve this litigation.
2. The Court has jurisdiction of the parties and subject matter.
3. Courtesy Health Watch, Inc. (“CHW”) filed a “Suggestion of Bankruptcy” herein on or about June 12, 2013, informing the Court of CHW’s status as a debtor in a Chapter 15 proceeding pending in the United States Bankruptcy Court for the District of Delaware, Bankruptcy Case No. 13-10894 (KG).

4. The Defendants deny wrongdoing or liability of any kind, but have agreed to entry of this Consent Judgment in order to resolve their dispute with Plaintiff. This Consent Judgment represents the signatories' settlement of a disputed claim, and the Court has made no finding of wrongdoing on the part of the Defendants.

5. This Consent Judgment constitutes a full and final resolution of any and all claims by the State of Iowa and the Iowa Attorney General against the Defendants for any and all violations or alleged violations of the Iowa Consumer Fraud Act (including Iowa Code section 714.16 and 714.16A) that occurred prior to the effective date of this Consent Judgment. In addition, the State of Iowa and the Iowa Attorney General agree to release and waive any right to conduct any investigation into acts, conduct, and/or practices of the Defendants that are resolved by the immediately preceding sentence.

6. The Court finds that this Consent Judgment should be entered.

7. For purposes of this Consent Judgment:

“Consumer” includes each person who is contacted by a representative of one or more Defendants and is solicited to provide material support to a donee organization by donating funds, becoming a sponsor, buying advertising, making a purchase, or otherwise; “consumer” includes any person from whom such support is solicited, whether or not the person in fact provides any support.

“Donee organization” means any entity for which one or more Defendants engage in fundraising.

“Fundraising” means any and all forms of soliciting donations and/or raising funds for a donee organization, pursuant to an arrangement that provides inter alia for how the proceeds of fundraising are to be divided between one or more Defendants and the donee organization; “fundraising” includes without limitation the sale of advertising, sponsorships, event tickets, or other merchandise in connection with supporting a donee organization. “Fundraiser” means one who engages in fundraising.

“Merchandise” has the meaning set forth at Iowa Code § 714.16(1)(i).

“TSR” stands for Telephone Sales Representative, and includes each person who acts for one or more Defendants, whether as an employee, as an independent contractor, or as an

employee of an independent contractor, in using the telephone to raise funds through direct contact with Iowa residents (including businesses).

**IT IS THEREFORE ORDERED** pursuant to Iowa Rule of Civil Procedure 1.1501 *et seq.* and Iowa Code § 714.16(7) that CHW and its principals, employees, agents, servants, representatives, or subsidiaries, and all other persons or entities acting in concert or participating with CHW, who have actual or constructive notice of the Court's injunction, shall be permanently enjoined from engaging, directly or indirectly, in any form of fundraising, whether by telephone or otherwise, directed to residents of Iowa or directed to residents of other states from an Iowa location. To the extent that one or more of the individuals named as defendants, Matt McFall, Wayne Loring, and Charlie Jenkins (hereafter "Individual Defendants"), engage hereafter in fundraising activities other than as a representative of CHW, they are subject to the other injunctive provisions of this Consent Judgment, but not to this paragraph.

**IT IS FURTHER ORDERED** that the Individual Defendants shall make no direct or indirect use whatsoever of information of CHW regarding persons in Iowa who made a pledge and/or donation in response to any fundraising efforts of the corporate defendant CHW, if such defendant(s) know or should know under the circumstances that such information was derived from such fundraising efforts. This includes without limitation using such information to make fundraising contacts, and/or selling, renting or otherwise making available any such information to another entity for the other entity's use in fundraising or otherwise.

**IT IS FURTHER ORDERED** that the Individual Defendants, to the extent such defendant(s) have the control necessary to effect compliance by a business engaged in Iowa fundraising, shall be enjoined from engaging in Iowa, whether individually or in combination, directly or indirectly, in the acts and practices set forth in the lettered subparagraphs below:

A. Stating or implying that a TSR is a member of, an employee of, or a volunteer for a donee organization, or is otherwise associated with such organization in any manner other than as a professional fundraiser or a representative of a professional fundraiser.

B. Failing in the course of a fundraising contact, prior to any description of the cause for which funds are being raised, any description of the donee organization, or any actual solicitation, to state clearly: the full name of the company or business acting as the professional fundraiser; that such entity is a professional fundraiser; and that the purpose of the contact is to request a donation.

C. Stating or implying that a substantial portion of a donation will go to the donee organization, or for a charitable or other purpose for which funds are solicited, if in fact less than 50% of donated funds go to such entity or purpose after the fundraiser has received its share. Without limiting the foregoing, a representation by a TSR that a check is to be written to the donee organization, or that a donor's check or donation will be sent directly to the donee organization, or that the donee organization controls the funds, is prohibited by this subparagraph unless accompanied by such additional explanation of the actual distribution of donated funds as is necessary to state fully and clearly how the funds are divided.

D. Stating or implying that a TSR is calling from some location other than the location from which the TSR in fact is calling.

E. Stating or implying that a donation will provide more of a benefit to the consumer's own community, region, or state than is in fact the case.

F. Stating or implying that a prospective donor has been or will be contacted less frequently by the business than is in fact the case.

G. Making any materially false or misleading statements or implications in the course of fundraising.

H. Providing to TSRs, or any employee who directly supervises TSRs, any form of performance incentive, such as a pay boost, periodic bonus, or other incentive, based on the number of donations or dollar volume of donations pledged, or based on the number or dollar volume of donations received, unless the provision of such performance bonus is also expressly contingent on compliance by the TSR or supervisor receiving the bonus with the requirements of this Consent Judgment, company policies established pursuant to this Consent Judgment, and the laws of Iowa.

I. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, a list of TSRs (including last known addresses and phone numbers, and beginning and ending dates of employment) (i) who are then employed by the business or who were so employed at any time in the sixty (60) days preceding receipt of the request; and (ii) whose employment involved making one or more contacts of Iowa residents for the purpose of soliciting donations or other payments.

J. Failing to establish procedures, policies and practices reasonably designed to ensure that no fewer than 20% of all telephone calls made to Iowa residents are recorded, that such recordings are clearly audible, and that such recordings are preserved intact for at least ninety (90) days. Such recording shall be conducted in such a manner that no representative whose calls are or may be recorded has any information bearing on which calls are being recorded and which are not.

K. Failing to provide to the office of the Iowa Attorney General, within five business days of receipt of a written (including faxed or e-mailed) request from that office, such copies of

recordings of telephone solicitations directed to one or more Iowa residents as Plaintiff may reasonably request.

L. Failing to establish procedures, policies and practices reasonably designed to ensure that a TSR responding to a consumer's question about the percentage or proportion of donations that are ultimately provided for the use of the donee organization, and/or the percentage or proportion of donations that are directed to the entity engaged in professional fundraising, provides an accurate and informative response and does not claim a lack of knowledge or refer the consumer to a website or other potential source of information, except that a TSR may refer and immediately transfer such an inquiry to a supervisor.

IT IS FURTHER ORDERED that, in addition to whatever other legal remedies may be available, a violation of this Consent Judgment constitutes a violation of the Iowa Consumer Fraud Act, Iowa Code § 714.16; however, all Defendants retain the right to vigorously defend themselves against any alleged violation of the Iowa Consumer Fraud Act and/or this Consent Judgment and do not waive any rights to defend themselves against any allegations.

IT IS FURTHER ORDERED that the Court retains jurisdiction for purposes of enforcing this Consent Judgment.

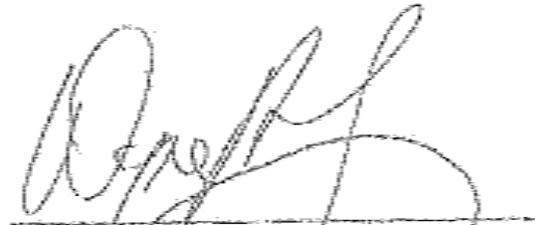
IT IS FURTHER ORDERED that the Defendants shall pay court costs.

IT IS SO ORDERED this 14<sup>th</sup> day of November, 2013.

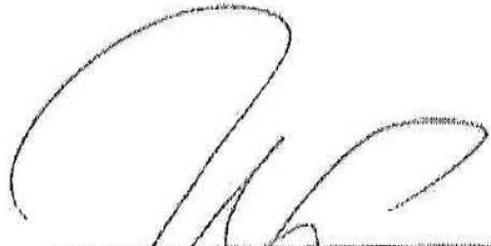
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FOR DEFENDANTS

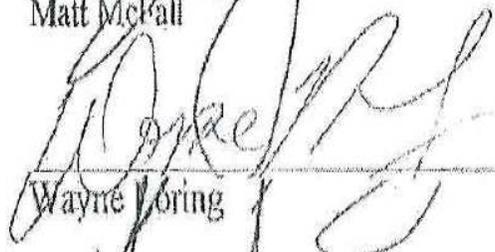
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For Courtesy Health Watch, Inc.

Date: 11/4/13

  
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Matt McFall

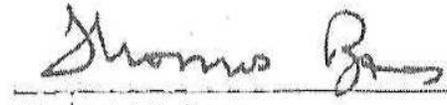
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\_\_\_\_\_  
Wayne Young

Date: 10/31/13

  
\_\_\_\_\_  
Charlie Jenkins

Date: 11/5/2013

  
\_\_\_\_\_  
Thomas M. Boes  
Attorney for Defendants AS TO FORM ONLY

FOR PLAINTIFF:

Date: 11-13-13

  
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Steve St. Clair  
Assistant Iowa Attorney General



State of Iowa Courts

**Type:** STIPULATED DECREE

**Case Number** EQCE072307  
**Case Title** STATE OF IOWA EX REL VS COURTESY HEALTH WATCH, INC.

So Ordered

A handwritten signature in black ink, appearing to read "Michael D. Huppert".

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Michael D. Huppert, District Court Judge,  
Fifth Judicial District of Iowa