

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Plaintiff,

v.

DIRECT MAIL PROCESSING, LLC, a
Georgia limited liability corporation;

and

REHG DATA ASSETS, INC., a
Georgia corporation,

Defendants.

EQUITY No. EQCE086323

CONSENT JUDGMENT

The Court, having been presented by Assistant Attorney General J. Andrew Cederdahl with this Consent Judgment approved by all parties, finds and orders as follows:

PARTIES

1. Defendant Direct Mail Processing, LLC is a Georgia limited-liability corporation with a principal place of business located at 2900 Delk Rd SE Suite 700-246, Marietta, Georgia 30067-5320.

2. Defendant Rehg Data Assets, Inc. is a Georgia corporation with a principal place of business located at 1355 Terrell Mill Road, Bldg 1482, Ste 100, Marietta, GA, 30067.

3. As used herein, the term “Defendants” means Direct Mail Processing, LLC, and Rehg Data Assets, Inc., as well as their employees, successors, principals, partners, members, agents, representatives, subsidiaries, assigns, parent or controlling entities, and all other persons, corporations or other entities acting in concert or participating with one or more Defendants who have actual or constructive knowledge of this Consent Judgment.

ALLEGATIONS

4. The Attorney General alleges the Defendants violated the Iowa Consumer Fraud Act, Iowa Code § 714.16 (“CFA”) and the Older Iowans Act, Iowa Code § 714.16A (“OIA”), by:

- a. engaging in a government imposter scam by sending Iowans misleading mail that falsely appeared to originate from a government entity; and
- b. targeting older Iowans in the scam.

5. The basis for Plaintiff’s allegations is the mailer, attached as Exhibit “A,” distributed to Iowa citizens, including Iowans sixty-five years of age and older.

6. The Defendants deny that the mailer identified at Exhibit “A” violated the CFA or OIA, or that they, or (as applicable) their agents, owners, officers, directors, or employees engaged in acts or practices which had the tendency to mislead a substantial number of consumers as to a material fact or facts or otherwise illegally targeted “older persons” as defined and elaborated in Iowa Code § 714.16A.3. However, the parties recognize the existence of a dispute between them and approve this Consent Judgment as a means to resolve the dispute. This Consent Judgment is not an admission of liability by them.

7. The Defendants understand and acknowledge that this settlement is binding as between them and the Consumer Protection Division of the Iowa Attorney General’s Office and is not binding upon other state regulatory agencies, including (but not limited to) the Iowa Insurance Division.

8. For purposes of entry of this Consent Judgment, the Defendants agree that any and all service or notice requirements relating to this Consent Judgment are fully met upon the Plaintiff’s emailing of a file-stamped copy of this Consent Judgment to attorney Jerry

Crawford.

9. The Court has jurisdiction of the parties and subject matter.
10. The Court finds that this Consent Judgment should be entered.

I. INJUNCTIVE RELIEF

11. **IT IS ORDERED**, pursuant to Iowa R. Civ. P. 1.1501 et seq., the CFA, and the OIA, the Defendants shall refrain, now and at all times in the future, from using lead generation and all other product and service marketing tactics targeting (a) one or more Iowa consumers or (b) that are conducted in whole or in part from any location in the State of Iowa, which use the following features and tactics:

- a. Including depictions of actual or illustrative government buildings on any mailer envelopes or enclosed solicitations, including, but not limited to, the United States Capitol building;
- b. Using words and/or phrases on the envelopes or enclosed solicitations, which explicitly or impliedly create a false impression the mailer is sent from or endorsed by any governmental entity, department, or program, including, but not limited to the following words and phrases and any other similar variations of said words and phrases:
 - i. Official business
 - ii. Official notification
 - iii. Important information about your government benefit enclosed
 - iv. [year] Government Benefit Information
 - v. Regulated government program
 - vi. “As a resident of Iowa”

- vii. “For Iowa citizens only”
- viii. Usage of graphics which a recipient might reasonably believe relate to government forms, such as the following:

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1.

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- c. Using words and/or phrases on the envelopes or enclosed solicitations that explicitly or impliedly create a misleading sense of urgency or threaten punitive consequences for failing to respond, including, but not limited to the following words and phrases and any other similar variations of said words and phrases:
 - i. Second warning
 - ii. Final warning
 - iii. Respond immediately
 - iv. Public notice
 - v. For official use only
 - vi. Penalty for non-authorized use (and all other mail tampering warnings);
- d. Creating intermediary corporations that may or may not be named on the mailers that obscure the Defendants’ involvement in the activities and/or otherwise act to mislead, confuse or obscure recipients about the persons and businesses sending or profiting from the mailers;

- e. Failing to identify the final entities or persons to which mailers inviting return of personal are or may be returned, and candidly disclosing the fact that information harvested from respondent Iowa consumers may be sold, transferred or otherwise used by for-profit solicitors;
- f. Failing to include, in a font size equal to or larger than the other substantive text of the mailer, identification of both a website and telephone number the Iowa recipient or his/her fiduciary or agent can call to “opt out” of future solicitations delivered by the Defendants; and
- g. Failing to include a reasonable disclaimer. All the Defendants’ solicitation and lead generation mailers shall include a prominent disclaimer, located within the materials in a manner designed to be effective and in bolded, 12-point font or greater, reading: “[Applicable business or person sending mailer] is **a for-profit business not associated with or endorsed by Medicare or any other governmental entity, program or benefit.**”

These permanent injunctions are entered against the Defendants pursuant to the authority of Iowa Code § 714.16 (7).

12. **IT IS FURTHER ORDERED** that, if the Defendants’ clients or potential clients request services or products that violate the provisions of this Consent Judgment, the Defendants shall refuse to provide said services. This permanent injunction is entered against the Defendants pursuant to the authority of Iowa Code § 714.16 (7).

II. APPOINTMENT OF A MONITOR

13. The Honorable Marsha Ternus (hereinafter “Monitor”) is appointed as the Monitor to oversee the Defendants’ compliance with the injunctive relief provisions outlined in

Paragraph 11 and 12 of this Consent Judgment.

14. In the event of any dispute arising over the Monitor's performance or the reasonableness of the Monitor's costs and fees, either the Defendants or the Iowa Attorney General may submit the issue resolved by the Fifth Judicial District Court for the State of Iowa.

15. The Monitor may be dismissed for any reason by agreement of the Defendants and the Iowa Attorney General. In the event they do not agree to the dismissal of the Monitor, either the Defendants or the Iowa Attorney General may submit the question of the Monitor's dismissal to the Fifth Judicial District Court for the State of Iowa, and the Monitor shall only be dismissed if that court finds there is good cause for dismissal.

"Good cause" means: (a) a material and substantial breach of the terms of this Consent Judgment by the Monitor, including the failure to comply with its terms, (b) any act of dishonesty, misappropriation, embezzlement, intentional fraud, or similar conduct by the Monitor, (c) any intentional act of bias or prejudice in favor or against either the Defendants or the Iowa Attorney General, or (d) conduct by the Monitor that demonstrates unfitness to serve in that capacity. Good Cause shall not include disagreements with the decisions of the Monitor, unless there is a clear pattern in the Monitor's decisions that demonstrates or shows that the Monitor has not been acting as an independent third party in rendering decision.

16. The Monitor shall be appointed for a term of three (3) years, to run from the date upon which this Consent Judgment is entered. If the Monitor is dismissed or leaves the position for any reason before the end of the term, another Monitor shall be appointed by agreement of the Defendants and the Iowa Attorney General to serve the remainder of the term.

Costs of the Monitor

17. The Court approves the Monitor's initial retainer fee of \$10,000.00 to be paid upon

entry of the Consent Judgment. The Monitor's ongoing hourly rate for work performed during her term shall be \$400.00, which shall be paid by the Defendants.

Powers and Duties of the Monitor

18. The Monitor shall independently review the Defendants' compliance with the injunctive relief provisions (Paragraphs 11 and 12) of this Consent Judgment during her term. The Monitor shall be permitted to review the Defendants' mailer solicitations sent to Iowa consumers or from any Iowa location, including lead generation mailers inviting return of information recipients.

19. The Monitor shall have reasonable access to the Defendants' Iowa mailer solicitations and the Defendants' employees that is sufficient to carry out her duties. *Provided, however,* that this Consent Judgment shall not effectuate a waiver of the attorney-client privilege or the attorney-work-product doctrine, and the Monitor shall not have the right to demand access to documents or information protected by the attorney-client privilege or the attorney-work-product doctrine.

20. In evaluating the Defendants' compliance with the provisions of this Consent Judgment, the Monitor shall consider the plain meaning of the provisions, Iowa Code § 714.16, applicable precedent of the Iowa Supreme Court, and any additional guidance that may be provided by the Iowa Supreme Court and Iowa Court of Appeals during her term as Monitor.

21. The Monitor's independent judgment regarding whether the Defendants' mailer solicitations comply with the injunctive terms of this Consent Judgment is final and cannot be appealed or arbitrated by the Defendants or the Iowa Attorney General.

22. The Monitor shall make a good faith effort to perform his or her duties in a manner designed to cause minimal disruption to the Defendants' activities. In this regard, the

Defendants shall designate at least one person to serve as the primary point of contact for the Monitor in order to facilitate the Monitor's access to documents and staff necessary to review the Defendants' compliance with this Consent Judgment. The Monitor shall communicate any request for documents or staff to the Defendants' designated contact(s), unless otherwise instructed.

23. If at any time the Monitor believes that there is undue delay, resistance, interference, limitation, or denial of access documents or staff the Monitor deems necessary to review compliance with this Consent Judgment, the Monitor shall meet and confer with at least one of the person(s) designated by the Defendants as primary point(s) of contact. If the Monitor cannot resolve such limitation or denial, it shall be immediately reported to the Iowa Attorney General.

24. Nothing in this Consent Judgment shall limit the ability of the Monitor to communicate at any time with the Iowa Attorney General regarding the Defendants' conduct or to provide documents or information to the Iowa Attorney General as it relates to the Monitor's role of ensuring compliance with this Consent Judgment.

Oversight and Compliance

25. The Monitor shall inform the Iowa Attorney General at any time it appears the Defendants are engaged in a pattern and practice of non-compliance with any requirement of this Consent Judgment. The Monitor shall gather all relevant facts before making any report to the Iowa Attorney General, including requesting the Defendants' position on the suspected violation. Upon receipt of information from the Monitor about compliance concerns, the Monitor, the Attorney General and Defendants shall meet and confer regarding the nature of the concern, and whether any remediation is necessary. If there is an agreement on the

resolution, a record shall be made in writing concerning the matter. If, after meeting and conferring, the Monitor determines the Defendants violated the provisions of Paragraph 11 or 12 of this Consent Judgment, and no agreement upon remediation can be reached between the Iowa Attorney General and the Defendants, the Iowa Attorney General may apply to this Court to impose a civil penalty upon the applicable Defendant(s) of not more than \$5,000 for each day of intentional violation pursuant to the authority of Iowa Code § 714.16 (7).

26. The Monitor and the person(s) designated as the Defendants' point(s) of contact shall confer as needed, to discuss any facts, matters, issues, or concerns that may arise in the administration of this Consent Judgment or that may come to the attention of the Monitor or the Defendants. The purpose of this commitment to confer is to address issues and concerns as they arise. In addition, the Monitor may in her discretion and on reasonable advance notice invite the Defendants' primary points of contact and the Iowa Attorney General to confer to the extent she deems it reasonably necessary for the administration of this Consent Judgment.

27. The Monitor shall issue a report (hereinafter "Annual Report") to the Iowa Attorney General and the Defendants within one year of the date upon which this Consent Judgment is entered and annually thereafter for the duration of the Monitor's term. The Monitor may make more frequent reports as necessary to the Iowa Attorney General. The Annual Report and all written reports requested by the Iowa Attorney General shall be provided to the Defendants prior to their presentation to the Iowa Attorney General. The Monitor and the Defendants shall meet and confer to discuss all written reports and Annual Reports prior to their presentation to the Iowa Attorney General. As part of this conferral process, the Monitor shall in good faith consider all reasonable modifications to the report proposed by the Defendants.

28. The Annual Report shall include:

- a. a description of the methodology and review procedures used;
- b. an evaluation of whether the Defendants are in compliance with the provisions of this Consent Judgment, together with a description of the underlying basis for that evaluation;
- c. Exemplar mailers upon which the Monitor relied to make his or her determinations;
- d. a description and analysis of any practice the Monitor believes may constitute a deceptive or unfair practice; and
- e. any matters that were resolved between the parties.

29. The Monitor's Annual Report shall identify only patterns or practices of noncompliance by the Defendants, if any, and is not intended to identify isolated incidents if the Monitor determines that such incidents are not indicative of the Defendants' compliance with the Consent Judgment.

30. No action or lack of action by the Iowa Attorney General regarding information received from the Monitor about the Defendants' conduct shall be considered affirmation, acceptance, or ratification of that conduct by the Iowa Attorney General.

Admissibility of the Monitor's Work Product and Testimony

31. Any Monitor report, finding, or other written document may be used by the Iowa Attorney General or the Defendants in any court hearing, trial, or other proceeding relating to this Consent Judgment. The Monitor's reports, findings, and other written documents shall be admissible into evidence in a proceeding between the parties if there is an alleged violation of this Consent Judgment.

32. The Monitor may testify in any court hearing, trial, or other proceeding relating to

this Consent Judgment. The Monitor's testimony may concern his or her reports, findings, opinions, or written documents relating to compliance with this Consent Judgment.

33. Nothing in this Consent Judgment limits the right of the Iowa Attorney General to conduct future investigations of other alleged violations of applicable law in addition to the independent work of the Monitor.

Confidentiality

34. The Monitor shall keep confidential any information, documents, and reports obtained or produced in the course of the Monitor's duties from any and all individuals, entities, regulators, government officials, or any other third party that is not a party to this Consent Judgment. Nothing in the preceding sentence shall limit the ability of the Monitor to make any disclosure compelled by law.

35. It is understood that any document, information, or report shared with the Iowa Attorney General pursuant to this Consent Judgment (including reports created by the Monitor and mailers reviewed by the Monitor) are subject to Iowa Code Chapter 22. Nevertheless, the Iowa Attorney General recognizes that some or all of such documents, information, or reports may be confidential pursuant to Iowa Code Chapter 22 or other applicable state or federal laws. In the event that the Iowa Attorney General receives a request to disclose a document, information, or report, and the Attorney General determines that the requested document, information, or report is not confidential pursuant to applicable law and is subject to disclosure, or if the Iowa Attorney General is compelled to produce the material pursuant to a court or administrative order, the Attorney General shall provide notice to the Defendants ten (10) business days prior to disclosing the document, information, or report to any third party, or any lesser period required under state law. Notwithstanding the above requirements, the Iowa

Attorney General may share any document, information, or report subject to this paragraph with any other local, state, or federal agency empowered to investigate or prosecute any laws, regulations, or rules.

Nonretaliation

36. The Defendants shall not intimidate, harass, threaten, or penalize any employee for his or her cooperation with or assistance to the Monitor.

III. MONETARY RELIEF TO THE STATE OF IOWA

37. **IT IS FURTHER ORDERED** that the Defendants, jointly and severally, shall immediately pay \$40,000.00 to the Attorney General in the manner instructed by the Attorney General, half of such sum to be deposited in the Consumer Education and Litigation Fund referred to in Iowa Code § 714.16C and the other to be deposited in the Elderly Victim Fund referred to in Iowa Code § 714.16A.

VI. OTHER PROVISIONS

38. **IT IS FURTHER ORDERED** that the Defendants shall not participate directly or indirectly in any activity to form or proceed as a separate entity, trust or corporation for the purpose of engaging in, or benefitting from, acts in Iowa or directed at Iowans that are prohibited by this Order or for any other purpose which circumvents any part of this Order. This permanent injunction is entered against the Defendants pursuant to the authority of Iowa Code § 714.16 (7).

39. **IT IS FURTHER ORDERED** that the Defendants shall immediately refrain from selling, renting, sharing, transferring, making available for use by others, or making any other for-profit use whatsoever of the names and/or other identifying or personal information of persons with Iowa addresses who previously responded to solicitations that would violate any

of the injunctive relief provisions of Paragraphs 11 and 12 of this Consent Judgment. The Defendants are permitted to provide said information in response to duly and lawfully served investigatory subpoenas, litigation discovery and to the Monitor. This permanent injunction is entered against the Defendants pursuant to the authority of Iowa Code § 714.16 (7).

40. **IT IS FURTHER ORDERED** the Defendants shall notify all principals, partners, members, employees, agents, representatives, subsidiaries, and assigns of the prohibited activities outlined within the “injunctive relief” section of this Consent Judgment within one week of the entry of this Consent Judgment.

41. **IT IS FURTHER ORDERED** that the Defendant shall comply with requests from the Attorney General for information relating to compliance with this Consent Judgment.

42. **IT IS FURTHER ORDERED** that nothing contained in this Consent Judgment shall be construed to waive any individual right of action by a consumer or a local, state, federal or other governmental entity.

43. **IT IS FURTHER ORDERED** that nothing herein diminishes the requirements, duties, obligations, or powers set forth in the CFA.

44. **IT IS FURTHER ORDERED** that the Attorney General’s execution of this Consent Judgment and its subsequent entry by the Court constitutes a settlement, and a release of the Defendants from any and all liability for any alleged violation of Iowa Code § 714.16 or § 714.16A described in Paragraph 4 that occurred prior to entry of this Consent Judgment and would violate the CFA and OIA. The Attorney General may seek to enforce violations of this Consent Judgment.

45. **IT IS FURTHER ORDERED** that, in addition to whatever other legal remedies may be available, a material violation of this Consent Judgment constitutes a violation of the

Consumer Fraud Act, Iowa Code § 714.16 (CFA), and each such violation by any of the Defendants, if established by a preponderance of the evidence in an enforcement action by the Attorney General, gives rise to all of the remedies provided in the CFA.

46. **IT IS FURTHER ORDERED** that the Court retain jurisdiction to enforce this Consent Judgment.

47. **IT IS FURTHER ORDERED** that the Defendants pay court costs, if any.

IT IS SO ORDERED.

Approved:

A handwritten signature in black ink that reads "J. Andrew Cederdahl". The signature is written in a cursive style with a large initial "J" and "A".

Date: 11/30/2020

J. Andrew Cederdahl
Assistant Iowa Attorney General



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQCE086323 STATE OF IOWA VS DIRECT MAIL PROCESSING LLC ET AL

So Ordered

A handwritten signature in black ink, appearing to read 'L. P. McLellan'. The signature is written in a cursive style and is positioned above a horizontal line.

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa