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8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* THOMAS C.
11 HORNE, Attorney General,

Case No.: CV2012-008644

12 Plaintiff,

AMENDED CONSENT JUDGMENT

13 vs.

14 HIGHER IMPACT, INC., an Arizona
15 corporation, STEPHANIE N. DAVIS, a single
16 woman, and ADRIEN PIRTLE and STACEY
17 PIRTLE, husband and wife,

(Assigned to the Hon. John Buttrick)

17 Defendants.

19 The State of Arizona ("State") filed a complaint alleging violations of the Arizona
20 Consumer Fraud Act, A.R.S § 44-1521, *et seq*, and the Arizona Telephone Solicitations Statute,
21 A.R.S. §44-1271, *et seq*. Defendants Higher Impact, Inc., an Arizona corporation, Stephanie N.
22 Davis, Adrien Pirtle and Stacey Pirtle, his wife, having been fully advised of the right to a trial
23 in this matter and having waived the same, and having admitted jurisdiction of the Court,
24 stipulate that the Court may enter the following Findings of Fact, Conclusions of Law and
25 Judgment.
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2 **FINDINGS OF FACT**

3 1. Defendant Higher Impact, Inc. is an Arizona corporation which operated in
4 Maricopa County, Arizona from 2008 through February 24, 2012. Defendant's principal
5 place of business was located at 3443 N. Central Avenue, Suite 900 in Phoenix, Arizona.

6 2. Defendant Stephanie Davis is a resident of Maricopa County, Arizona and is the
7 president and sole officer of Higher Impact, Inc. As such, the State alleges that she directed,
8 managed and controlled the operations of defendant Higher Impact, Inc.

9 3. Defendant Adrien Pirtle is a resident of Arizona and a manager of Higher
10 Impact, Inc. As such, the State alleges that he directed, managed and controlled the operations
11 of defendant Higher Impact, Inc.

12 4. Defendant Stacey Pirtle is the wife of Adrien Pirtle and is named herein for
13 community property purposes only.

14 5. The State alleges that, during the time they were in business, Defendants
15 initiated telephone calls to consumers to sell web-based businesses and advertising.
16 Defendants claimed they would set up and provide technical maintenance on websites which
17 are owned by the individual consumers. Consumers were given the option of selling one or
18 more of five different products or services on their website: shopping, mortgage, healthcare,
19 audio books, and mobile phones.

20 6. That State alleges that Defendants represented to consumers that they would
21 earn a commission when website surfers purchase a product or service from the consumer's
22 website.

23 7. The State alleges that Defendants charged consumers up to \$99 for a single
24 website or up to \$499 for a combination of websites. The State further alleges that
25 Defendants told consumers that the cost of the website included design, hosting and
26 maintenance of their website, and in the case of a multiple website purchase, healthcare

1 coverage. The websites were not designed for each individual consumer, but rather were
2 duplicates of the generic website created by the company.

3 8. The State alleges that Defendants promised consumers that they were assigned
4 their own personal ad coach who designed a marketing plan exclusively for that consumer,
5 and the consumer would have access to that coach for the life of the business. Defendants
6 then contacted consumers to sell advertising to those who purchased websites. During this
7 call, Defendants urged consumers to purchase an advertising package, explaining to
8 consumers that such advertising was necessary to bring potential customers to their website.

9 9. The State alleges that Defendants claimed the advertising would result in
10 monthly earnings between \$1,000 and \$10,000, depending on the advertising package
11 purchased. The cost of Defendants' advertising packages typically ranges from \$1,000 to
12 \$15,000.

13 10. The State maintains that few, if any, consumers who purchased Defendants'
14 websites realized any income. That State alleges that no consumers who purchased
15 Defendants' advertising services realized income in excess of the cost of their advertising
16 package.

17 VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT

18 11. The State alleges that Defendants made various false and deceptive statements
19 in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-1521, et seq., including but not
20 limited to the following:

21 A. Defendants falsely told consumers that they would generate income from
22 the design and set up of their websites.

23 B. Defendants made numerous deceptive and misleading claims to
24 consumers regarding the effectiveness of their advertising and the increased earnings
25 that consumers would realize if they purchased said advertising.
26

1 C. Defendants made numerous deceptive and misleading claims to
2 consumers about the availability of consultations with their personal ad coaches for the
3 life of their website. Many consumers were unable to contact their personal ad coaches
4 after payment to defendants is made.

5 D. Defendants made numerous deceptive and misleading statements about
6 consumers' ability to obtain health insurance with the purchase of multiple websites.

7 E. Defendants made numerous deceptive and misleading claims to
8 consumers regarding their ability to obtain full refunds if they are dissatisfied with
9 defendants' products or services. Defendants falsely represented to numerous
10 consumers, that there was a 30 day refund period for purchase of the website, and
11 100% money back guarantee if their advertising was not fulfilled.

12 F. Defendants falsely represented to consumers that their advertising has
13 been completely fulfilled.

14 **VIOLATIONS OF THE ARIZONA TELEPHONE SOLICITATIONS STATUTE**

15 12. Defendants conducted "telephone solicitation sales" as defined under the
16 Telephone Solicitations Statute, A.R.S. § 44-1271, et seq. In so doing, Defendants were
17 required to comply with the mandates of the Statute.

18 13. From the inception of their business in 2008 until January 17, 2012, Defendants
19 conducted telephone solicitations without filing a verified registration statement with the
20 Arizona Secretary of State as set forth in A.R.S. § 44-1272. Defendants filed a verified
21 registration statement on January 17, 2012.

22 14. From the inception of their business in 2008 until January 1, 2012, Defendants
23 conducted telephone solicitations without first filing a bond in the amount of one hundred
24 thousand dollars (\$100,000.00) with the Arizona State Treasurer as required in A.R.S. § 44-
25 1274. Defendants obtained a bond which became effective on January 1, 2012.

26

1 15. Defendants conducted telephone solicitations without providing the required
2 disclosures and notices of cancellation to consumers, both over the telephone and in writing,
3 as required by A.R.S. § 44-1276. The State alleges that, in many instances, Defendants did
4 not honor consumers' right to cancel and refund requests as mandated by A.R.S. § 44-
5 1276(C).

6 16. As provided in A.R.S. § 44-1278.C., Defendants' violations of the Telephone
7 Solicitations Statute constitute an unlawful practices under the Arizona Consumer Fraud Act,
8 A.R.S. § 44-1521, et seq.

9
10 **CONCLUSIONS OF LAW**

11 17. The actions described in paragraphs 1 through 16 above constitute violations of
12 A.R.S. § 44-1521, et seq.

13 18. While engaging in the acts and practices alleged in paragraphs 12 through 16
14 above, Defendants were at all times acting willfully as defined by A.R.S. § 44-1531(B).

15 **ORDER**

16 NOW, therefore, it is ORDERED, ADJUDGED, AND DECREED:

17 1. Defendants, Higher Impact, Inc., Stephanie N. Davis, and Adrien Pirtle, their
18 officers, agents, servants, employees, successor corporation(s), and attorneys, and all persons
19 in active concert or participation with them shareholders, directors, employees, agents, or
20 other representatives who receive actual notice of this order by personal service or otherwise
21 are hereby permanently enjoined and restrained from, directly or indirectly:

22 A. Engaging in any conduct in violation of the Arizona Consumer Fraud
23 Act, A.R.S. § 44-1522, et seq., the Arizona Telephone Solicitations Act, A.R.S. § 44-
24 1271, et seq. or the Federal Trade Regulation Rule Concerning Franchising and
25 Business Opportunities, 16 C.F.R. § 436;

26

1 B. Engaging in, receiving any remuneration of any kind whatsoever from,
2 holding any ownership interest, share or stock in, or serving as an officer, director,
3 trustee, manager or salesperson of any business entity engaged, in whole or in part, in
4 the advertisement and/or sale of any business opportunity, web-based business
5 opportunity sale or business opportunity advertising, within the State of Arizona or to
6 any consumer located in Arizona. For purposes of this Consent Judgment, the
7 definition of "business opportunity" is set forth in A.R.S. § 44-1271, *et seq.* as
8 amended, 2012 Ariz. Legis. Serv. Ch. 186 (H.B. 2825)(West);

9 C. Misrepresenting the terms of any refund policy;

10 D. Refusing to honor requests for refunds where such requests are made in
11 accordance with Arizona law or the written contract;

12 E. Refusing to honor requests for cancellations where such requests are
13 made in accordance with the represented cancellation policy;

14 F. Refusing to honor requests for cancellations where such requests are
15 made in accordance with Arizona law;

16 G. Engaging in, receiving any remuneration of any kind whatsoever from,
17 holding any ownership interest, share or stock in, or serving as an officer, director,
18 trustee, manager or salesperson of any business entity engaged, in whole or in part, in
19 the advertisement and/or sale of any business opportunity or any products/services
20 associated with a business opportunity in the State of Arizona that includes outbound
21 telemarketing as a means to generate sales. The parties do not intend this provision to
22 prohibit Defendants from engaging in telephone sales in connection with a non-
23 business opportunity venture. Business opportunity shall be defined as set forth in
24 paragraph 1(B) above;

1 H. Making any and all outbound telemarketing calls with respect to a
2 business opportunity or any products/services associated with a business opportunity to
3 any consumer who resides in the State of Arizona;

4 I. Making any and all outbound telemarketing calls with respect to a
5 business opportunity or any products/services associated with a business opportunity,
6 from any state, to any consumer residing in the State of Arizona;

7 J. Providing to any person, including any natural person or his legal
8 representative, any partnership, domestic or foreign corporation, any company, trust,
9 business entity, or association, any agent, employee, salesman, partner, officer,
10 director, member, stockholder, associate, or trustee, other than a law-enforcement
11 agency, the name address, telephone number, e-mail address, fax number and/or credit
12 card or bank account number of any consumer who provided such information to or did
13 business with the defendants, their successors, assigns, agents, employees, officers,
14 servants and persons who acted in concert or participation with them.

15 2. Plaintiff is awarded judgment, pursuant to A.R.S. § 44-1528.A.2., against
16 Defendants Higher Impact, Inc., Stephanie N. Davis, Adrien Pirtle and Stacey Pirtle, husband
17 and wife, jointly and severally, for restitution, not to exceed \$250,000 (Two Hundred and Fifty
18 Thousand Dollars), to be paid, pro rata, to all consumers who conducted business with
19 Defendants and who: (1) filed a complaint or who will file a complaint within thirty (30) days
20 after the entry of this Consent Judgment, with the Attorney General's Office, Better Business
21 Bureau or any other law enforcement agency, and (2) previously did not received a full refund
22 from defendants or a chargeback from the consumer's own credit card company. The State
23 may contact any or all eligible consumers to verify that they received a refund or chargeback.
24 A statement by any consumer's bank, debit card or credit card company that a payment was
25 made and/or a refund or chargeback was not issued shall be conclusive evidence that said
26 consumer remains eligible to receive restitution from defendants. This Court shall resolve any

1 questions relating to consumer eligibility or receipt of payments, refunds or charge backs.

2 3. Defendants shall make monthly payments to the State of Arizona. The amount of
3 each payment is based upon Defendants' gross monthly earnings, less federal and state tax, as
4 follows:

5	<u>Gross Monthly Earnings (after taxes)</u>	<u>Amount of Payment</u>
6	Less than \$4,000	\$100.00
7	\$4,000 -\$4,900	\$300.00
8	\$5,000 -\$5,900	\$500.00
9	\$6,000-\$6,999	10%
10	\$7,000-\$8,499	10%
11	\$8,500-\$9,999	10%
12	\$10,000-\$10,999	15%
13	\$11,000-\$11,999	15%
14	\$12,000-\$12,999	20%
15	\$13,000-\$13,999	20%
16	\$14,000 +	30%

17 Should Defendants' gross monthly income (less taxes) exceed \$15,000.00, Defendants agree to
18 pay an additional sum of \$750.00 for each additional \$1,000 of gross monthly income.

19 4. In order to facilitate the monitoring of compliance with the provisions of this
20 Consent Judgment, Defendants will provide the Attorney General's Office, sufficient
21 documentation, including but not limited to copies of pay stubs, W-2 statements and/or state
22 and federal tax returns on an annual basis, on or before June 1st of each year, to demonstrate
23 compliance with the payment schedule contained herein. In the event that Defendants provide
24 said documentation or fail to accurately report their monthly income, the balance of the
25 restitution is immediately due and owing.

26 5. Defendants shall make the first payment within thirty (30) days from the entry of

1 this Consent Judgment. Each subsequent payment is due on or before the 15th day of each
2 month. Payments are to be made via cashier's check or money order, payable to the Office of
3 the Attorney General, State of Arizona. Each payment is to be delivered or mailed and
4 postmarked, postage prepaid, to the Attorney General on or before the 15th of each month. If
5 all payments are made in a timely fashion, no interest or collection costs shall accrue. Failure to
6 make a payment within ten (10) days of the date due is a default and the entire unpaid balance,
7 including attorneys' fees and costs, plus interest at a rate of ten percent (10%) from the date of
8 the entry of this Consent Judgment and costs of collection, less any amount previously paid,
9 shall be immediately due and owing.

10 6. The Attorney General shall promptly deposit any restitution funds received in an
11 interest-bearing trust account with an Arizona insured financial institution and shall disburse
12 said funds on a pro rata basis based upon the relative losses of the eligible consumers
13 described in paragraph 2 above. Distributions shall be made at such times as the Attorney
14 General determines appropriate in his sole and absolute discretion considering the amount
15 available and the cost of distribution. In the event that an eligible consumer, his or her heirs
16 or assigns, cannot be located after reasonable efforts, that eligible consumer's restitution
17 payment shall be re-deposited in the interest-bearing trust account and distributed to the
18 remaining eligible consumers at the time of the next disbursement. If, however, the State
19 cannot locate an eligible consumer, his or her heirs or assigns, prior to the final distribution of
20 restitution funds, that eligible consumer's restitution payment shall revert to the Consumer
21 Fraud revolving fund and shall be used, pursuant to A.R.S. § 44-1534.01, for the purposes set
22 forth therein.

23 7. Plaintiff is awarded judgment against Defendants Higher Impact, Inc., Stephanie
24 N. Davis, a single woman, Adrien Pirtle and Stacey Pirtle, husband and wife, jointly and
25 severally, for civil penalties in the amount of Three Hundred, Thirty Thousand, Nine Hundred
26 Sixty Dollars (\$330, 960.00). Three Hundred and Ten Thousand, Nine Hundred and Sixty

1 Dollars (\$310,960.00) of the civil penalty portion of this judgment shall be considered satisfied
2 if Defendants make full and complete payment to the State of the restitution portion of this
3 judgment. For purposes of this paragraph and any subsequent proceedings to enforce payment,
4 including but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding,
5 Defendant waive any right to contest any of the allegations in the State's Complaint. All
6 monies paid as civil penalties under this Consent Judgment shall be administered in accordance
7 with A.R.S. § 44-1531.01.

8 8. Plaintiff is awarded judgment against Defendants Higher Impact, Inc., Stephanie
9 N. Davis, Adrien Pirtle and Stacey Pirtle, husband and wife, jointly and severally, for
10 attorneys' fees and costs in the amount of One Thousand, Five Hundred Dollars (\$1,500.00),
11 payable at the time of entry of this judgment, to be deposited in the Consumer Fraud
12 Revolving Fund pursuant to A.R.S. § 44-1534.01 and used for the purposes set forth therein.

13 9. All documentation establishing income and the payments described above are to
14 be delivered or mailed, postage prepaid, to the Attorney General's Office, 1275 W.
15 Washington, Phoenix, Arizona 85007. Failure to make a payment within ten (10) days of the
16 date due is a default and the entire unpaid balance, plus interest at a rate of ten percent (10%)
17 from the date of entry of the judgment, and costs of collection, less any amount previously
18 paid, shall be immediately due and owing.

19 10. Nothing in this Consent Judgment shall be construed as an approval by the State
20 or this Court of Defendants' past, present, or future conduct, and Defendants are enjoined
21 from directly or indirectly representing anything to the contrary.

22 11. Jurisdiction is retained by this Court for the purpose of entertaining an
23 application by Plaintiff for the enforcement of this Judgment.

24 12. Pursuant to Rule 54(b) of the Rules of Civil Procedure, the Court has
25 determined that all issues and parties are conclusively disposed of by this Judgment, there is
26 no reason for delay and it is therefore directed that Judgment as provided herein shall be

1 entered forthwith.

2 **CONSENT TO JUDGMENT**

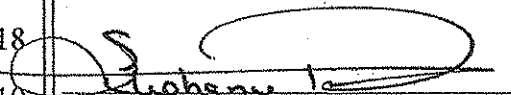
3 1. Defendants acknowledge that they were served with a copy of the Summons and
4 Complaint, have read the Findings of Fact, Conclusions of Law and Order, are aware of their
5 right to a trial in this matter and have waived the same.

6 2. Defendants admit the jurisdiction of the Court and consent to entry of the
7 foregoing judgment.

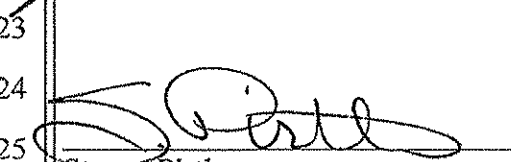
8 3. Defendants state that no promise of any kind or nature whatsoever was made to
9 them to induce them to enter into this Consent Judgment and that they have entered into the
10 Consent Judgment voluntarily.

11 4. Defendants acknowledge that their acceptance of this Consent Judgment is
12 solely for the purposes of settling this litigation and does not preclude any other agency or
13 officer of this State or subdivision thereof from instituting other civil or criminal proceedings
14 as may be appropriate now or in the future.

15 5. Stephanie N. Davis represents that she is the President and sole officer or
16 director Higher Impact, Inc. and that, as such, she is authorized to enter into this Consent
17 Judgment for and on behalf of Higher Impact, Inc.

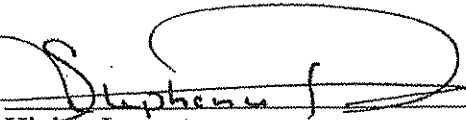
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19 Stephanie N. Davis

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22 Adrien Pirtle

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25 Stacey Pirtle

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Higher Impact

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By: Stephanie N. Davis, President

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APPROVED AS TO FORM AND CONTENT:

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Thomas C. Horne

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Attorney General

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By: _____

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Nancy V. Anger

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Assistant Attorney General

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State of Arizona

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By: _____

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Juliet Peters

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Becker Peters

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Attorneys for Defendants

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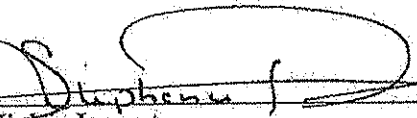
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Higher Impact
By: Stephanie N. Davis, President

APPROVED AS TO FORM AND CONTENT:

Thomas C. Horne
Attorney General

By: 
Nancy V. Alger
Assistant Attorney General
State of Arizona

By: /s/Juliet Peters
Juliet Peters
Becker Peters
Attorneys for Defendants

2583348

Granted

Signed on this day, June 29, 2012



/s/ John Buttrick
Judicial Officer of Superior Court