

Defendants. These additional Defendants contest jurisdiction. However, in order to avoid the expense of unnecessary litigation, the aforesaid entity defendants (hereinafter individually a “Defendant” and collectively the “Defendants”), are Defendants. Plaintiff and Defendants agree to entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

1. STIPULATIONS

The parties agree to the entry of this Agreed Final Judgment and, at their request, the COURT **FINDS** that:

1.1 The Texas Attorney General, acting through the Consumer Protection Division, has asserted certain claims and causes of action against Defendants under the Texas Deceptive Trade Practices – Consumer Protection Act, TEX. BUS. & COM. CODE § 17.47 et seq. (“DTPA”), in a lawsuit first filed November 25, 2008 in the District Court of Travis County, Texas (the “Lawsuit”);

1.2 Defendants deny the allegations of the Attorney General, and the parties agree and stipulate that neither this Agreed Final Judgment and Permanent Injunction nor the payment of money by Defendants constitutes an admission by Defendants or any person or entity affiliated therewith of any violation of the DTPA or any other law;

1.3 The parties agree that this Agreed Final Judgment and Permanent Injunction is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation and that it does not constitute an admission of any violation of any law by Defendants or any person affiliated therewith and that, in accordance with the terms of this Agreed Final Judgment and Permanent Injunction, the parties have agreed to settle this matter.

1.4 The parties recognize that Defendants are subject to an Assurance of Voluntary

Compliance Pursuant to New York Executive Law §63(15) (the “New York AVC”) and it is the parties’ and the Court’s intent that nothing in this Agreed Final Judgment and Permanent Injunction shall be interpreted to require the Defendants to violate the New York AVC or to pay amounts that have been paid pursuant to the New York AVC.

1.5 Defendant Albert Houllou is an individual residing in New York. Each of the remaining Defendants is a New York limited liability company with the exception of Top Choice Digital World, Inc, which is a New York corporation;

1.6 Defendants do not contest jurisdiction or venue in this case for purposes of entering into this Agreed Final Judgment and Permanent Injunction and enforcement of same. Negotiating, entering into and filing this Agreed Final Judgment and Permanent Injunction shall not be considered the admission of jurisdiction or venue for any other purposes;

1.7 This Agreed Final Judgment and Permanent Injunction is non-appealable;

1.8 Defendants acknowledge notice of this Agreed Final Judgment and Permanent Injunction and acceptance of the same, therefore no writ need be issued; and

1.9 The Court shall have continuing jurisdiction to enforce this Agreed Final Judgment and Permanent Injunction.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

2. DEFINITIONS

For purposes of this Agreed Final Judgment and Permanent Injunction, the following definitions shall apply:

2.1 “**Business Day**” means a day other than a Saturday, Sunday, state holiday, federal

holiday, or any Jewish holiday for which Defendants' business operations are closed.

2.2 “**Clear and Conspicuous**” or “**Clearly and Conspicuously**” means that: the required disclosure is in such size, color, contrast, location, duration and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in direct proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. For print communications, the message shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in print that contrast with the background against which it appears. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to comprehend it. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented in the audio or visual portions of the communication so as reasonable for the viewer to understand it. In any communication presented solely through visual or audio means, the message must be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Any visual image shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in location sufficiently noticeable for a consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary, inconsistent with, or in mitigation of the message shall be used in any communication.

2.3 “**Complaint,**” “**Complainant,**” “**Complains**” or “**Complaining**” means any expression of dissatisfaction by a Consumer with a Defendant. A general expression of dissatisfaction with a Defendant, however, does not qualify as a Complaint.

2.4 “**Compliance Employee**” means that person designated by Defendants to undertake the training of those of Defendants’ employees who interact with Consumers, to comply with all clearly applicable consumer protection laws and with the terms and conditions of this Agreed Final Judgment and Permanent Injunction. Each Defendant shall designate the Defendant’s initial Compliance Employee within thirty (30) calendar days following the Effective Date of this Agreed Order and Permanent Injunction and shall notify the Consumer Protection Division in writing of the name, address, and telephone number of the Compliance Employee or any subsequent replacement.

2.5 “**Consumer**” as used herein means a person or entity who is a resident of the State of Texas who seeks or acquires by purchase or lease any goods or services from Defendant.

2.6 “**Controlling Financial Interest**” means possessing an interest sufficient to control the actions of the business entity, including but not limited to owning more than 50 percent interest in the business entity or having a voting majority in any such business.

2.7 “**Effective Date**” means the date upon which this Agreed Final Judgment and Permanent Injunction, fully executed by the Court and all parties, is entered by the Court. The Plaintiff shall provide each Defendant prompt written notice of the entry of the Agreed Final Judgment and Permanent Injunction in accordance with the Notice provisions of this Agreed Final Judgment and Permanent Injunction as well as a copy of the same.

2.8 “**Grey Market Goods**” means any goods, products, merchandise, equipment,

accessories, or items that flow through distribution channels other than those authorized by the manufacturer or producer to be sold, offered, or distributed in the United States.

2.9 “**Price Comparison Web Site**” means any Internet Web site that displays price listings from more than one retailer for specific goods, allowing Consumers to purchase the good from the desired retailer.

2.10 “**Qualified Consumer**” means a Consumer who has filed a written Complaint prior to or within 90 days after the Effective Date with the Texas Attorney General, with the Better Business Bureau, or with the Defendant, alleging any act or practice stated in Plaintiff’s Amended Petition or addressed by the injunctive relief in this Agreed Final Judgment or Permanent Injunction, including but not limited to misrepresentations as to the nature, price, origin, type, availability, quality, or characteristics of goods or services Defendant offered for sale. The Texas Attorney General has provided counsel for Defendant with a list of individuals whom it believes may be Qualified Consumers that includes each such person’s email address and/or physical address which shall be used for sending the offer letters and claim forms referenced in Section 4 below. This list was produced as Exhibit “A” to the State’s January 12, 2011 “Plaintiff’s Supplemental Response to Defendants’ Request for Disclosure”.

A Consumer who has applied to receive, or who has already received restitution in connection with a transaction with a Defendant through the New York AVC, New York Better Business Bureau, through a credit or debit card charge back, or stop payment, shall not be a Qualified Consumer entitled to restitution under this Agreed Final Judgment in connection with the same transaction.

2.11 “Upsell” means an oral or written communication between a Consumer and any Defendant after the Consumer has submitted payment information to any Defendant for the purchase of a good, service, or warranty during which the Defendant attempts to sell any goods, services, or warranties in addition to the original order.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

3. PERMANENT INJUNCTION

Prohibition Against False and Misleading Representations Regarding Goods

3.1 Defendants shall be permanently enjoined, restrained, or prohibited from making false statements or misrepresentations, in writing or orally, about the value, quality, or necessity of any goods, services, or warranties advertised, sold, or offered for sale by the Defendants to any person in Texas, including but not limited to:

- A. misrepresenting that a good is new;
- B. misrepresenting the price of a good;
- C. misrepresenting that a good is in-stock or available;
- D. misrepresenting that a good is a United States model;
- E. misrepresenting the memory storage space of a good;
- F. misrepresenting the duration that a battery may maintain its charge; and
- G. misrepresenting that additional batteries, additional memory cards, or any optional accessories are necessary to ensure the ordinary operation of the good.

3.2 Defendants shall Clearly and Conspicuously disclose all material conditions regarding

the goods, services, and warranties advertised, sold, or offered for sale by Defendants to any person in Texas including Clearly and Conspicuously disclosing the following:

- A. the cost of the good;
- B. the model number of the good;
- C. the name of the manufacturer;
- D. the fact, if known to be true, that such good is out-of-stock or unavailable;
- E. the fact, if true, that the good is used or refurbished;
- F. the fact, if true, that a warranty accompanies the good;
- G. the fact, if true, that other charges may be applied to the cost of the good, including but not limited to tax, insurance, and shipping charges; and
- H. a list of any accessories that are included with the sale of the product, for example batteries or battery packs, cases, A/C adapters, lenses, screen protectors, and stands or tri-pods.

3.3 With respect to any Grey Market Goods advertised, sold, or offered for sale by Defendants to persons in Texas either on the telephone or in writing, Defendants shall Clearly and Conspicuously and accurately disclose on all advertisements and at the point of sale, where accurate and if true, that the merchandise consists of Grey Market Goods and thus may not be:

- A. accompanied by a manufacturer's valid United States warranty;
- B. accompanied by instructions in English; and
- C. eligible for rebates, if any, offered by the manufacturer.

3.4 For every good, service, and warranty advertised, sold, or offered for sale by

Defendants on the Internet, the disclosures required by paragraphs 3.2(A) – (G) and, if applicable, by paragraph 3.3 above, shall be made on any page of the Defendants' Web sites on which a customer may initiate a purchase of that good, service, or warranty (for example, the page on which it can be added to the shopping cart). Nothing in this paragraph shall be interpreted to prohibit the disclosures from occurring on additional website pages, and warranty information may be listed in proximity to accessory listings.

3.5 For every good, service, and warranty sold solely over the telephone in an initial sale (as distinguished from an Upsell), the disclosures required by paragraphs 3.2 and 3.3 above shall be made Clearly and Conspicuously before Defendant obtains any bank or financial institution account information that will be used to make a payment. This term does not include non-bank specific information including, but not limited to, name, address, and telephone number.

3.6 After a Consumer has made a purchase from any Defendant, whether such purchase was made via the Internet or the telephone, Defendant shall, within one business day of completion of the sale, but before the good has been shipped, if the Consumer has provided an email address, send an electronic mail message to the Consumer that discloses the information required in paragraphs 3.2 and 3.3 and that discloses each good, service, or warranty purchased, the price of each good, service, or warranty, and the total price of the purchase. The email message shall also identify shipping, handling, and insurance charges, either separately identified or combined as a single amount. If the Consumer does not provide a valid email address, the disclosures required in this paragraph shall be included with the shipped goods.

3.7 Nothing herein shall prevent Defendants from contacting Consumers to engage in an Upsell. Provided, however, that the following conditions apply to every Upsell:

- A. For any new or additional items purchased during an Upsell, Defendants shall make all the required disclosures in Paragraphs 3.2(A) – (G) and 3.3 in the same time manner and time periods prescribed by Paragraphs 3.4-3.5;
- B. Defendants shall disclose the good, service, or warranty the Consumer purchased or attempted to purchase in the original order;
- C. Defendants shall disclose the adjusted purchase price as a result of the Upsell;
- D. Defendants shall send an electronic mail message to the Consumer, if the Consumer has provided a valid email address, that conforms with paragraph 3.6 above; and
- E. Defendants shall not cancel a Consumer’s original order because the Consumer refuses to agree to purchase additional goods, services, or warranties.

Provided, however, when an Upsell solely involves the sale of a new (“new” as utilized in this paragraph means not used or refurbished), non-grey market, normally unwarranted accessories, aftermarket replacement plans or warranties pertaining to the primary product or products sold in the initial sale to the Consumer prior to the Upsell, Defendants may, if applicable, use the term “generic” in lieu of disclosing the model number or identifying the manufacturer.

Restriction Regarding Use of Price Comparison Web Sites to Advertise

3.8 **IT IS FURTHER ORDERED THAT** Defendants shall be permanently enjoined, restrained, or prohibited from advertising or obtaining any sales leads through any Price Comparison Web Site in which Defendants or any of their officers have a Controlling Financial Interest. If Defendants or any of their officers have any financial interest in a Price Comparison Web Site other than a Controlling Financial Interest, Defendants shall be permanently enjoined, restrained, or prohibited from advertising or obtaining any sales leads through such Price Comparison Web Site unless Defendants Clearly and Conspicuously disclose such interest on each of Defendants' Web pages that directly links from the Price Comparison Web site and in Defendants' Web site terms and conditions or similar document. In determining a person's financial interest in any business entity, you shall include in the calculation of such person's interest, any interest held by such person's (i) spouse, (ii) dependent, or (iii) other person or entity under such person's direction or control.

3.9 No Defendant shall represent, either directly or indirectly, on any of its Web sites that it is certified, trusted, recommended, or otherwise endorsed by any entity or Web site if such Defendant or any of its officers, directors, or owners have any direct or indirect ownership interest in the entity or Web site.

3.10 No Defendant shall misrepresent or assist any other person in misrepresenting, directly or indirectly, the source, content, or existence of any Consumer testimonial or review.

Policies and Procedures

3.11 **IT IS FURTHER ORDERED THAT** Defendants shall, within sixty (60) days of the Effective Date of this Agreed Final Judgment and Permanent Injunction, establish, implement, and maintain policies and procedures to ensure compliance with this Agreed Final Judgment and

Permanent Injunction and the DTPA. Such policies and procedures shall include:

- A. Developing, implementing, and maintaining a procedure to timely review, investigate, and respond to all Consumer Complaints, including a process to generate reports that reflect the receipt of such complaints and Defendants' response to each complaint. For purposes of compliance with this provision, Complaint voice-mails and email messages received by Defendants from Consumers must be responded to within five (5) business days, and Defendants must respond to other written inquiries received by Defendants from Consumers within ten (10) business days of receipt;
- B. Nothing in this section shall require a Defendant to accept return of a Consumer-damaged item or an item that the Consumer has used (other than an initial use to determine whether the item properly operates or operates as a Defendant represented). For purpose of compliance with this provision, if any Consumer accurately Complains to any Defendant within 30 days of their transaction date that the terms of the actual sale do not match the terms that the Defendant disclosed to the Consumer, or if any Defendant determines during its investigation of a Consumer Complaint that there has been any other violation of this Agreed Final Judgment and Permanent Injunction or the law, within ten (10) business days of discovering the violation, Defendants shall send a notice to the last known contact of the Complaining Consumer, whether by U.S Mail, electronic mail, or telephone, Clearly and

Conspicuously disclosing that, in resolution of the Complaint, the Consumer can elect to void the transaction, receive a full refund (or such amount in addition to an amount already received that would constitute a full refund), and have any received goods that were related to the Complaint returned to the Defendants at no cost to the Consumer; unless; however, a Defendant confirms that the Consumer has already resolved, settled or otherwise received full compensation for that specific claim, confirms that the Consumer did not incur the charges at issue, or produces clear and convincing evidence of the Consumer's intent to incur such charges. Such clear and convincing evidence must be demonstrated through disclosures, recordings, verifications, and/or confirmations. In circumstances in which a Defendant is not required to maintain such disclosures, recordings, verifications, and confirmations, the Defendant may rely on other clear and convincing evidence that belies the Consumer's claim. For at least two (2) years from the Effective Date, Defendants shall maintain evidence that such a notice was sent to each Complaining Consumer entitled to such notice, such as a return letter or email, or audio recording. Subject to the conditions and limitations set out herein, if the Complaining Consumer exercises his or her right to void the transaction, Defendants shall cancel the transaction and refund all amounts paid by that Consumer within ten (10) business days of the Consumer's cancellation, provided the Consumer has returned the

good(s) subject to the voided transaction. The refund shall include any reasonable cost of return as documented by the shipping bill, postage indicated upon the package, or other receipt for costs of return transportation received from the Consumer.

- C. Developing, implementing, and enforcing a disciplinary policy and procedure reasonably sufficient to ensure compliance with this Agreed Final Judgment and Permanent Injunction;
- D. Developing, implementing, and maintaining a method for recording and preserving all conversations between Defendants' employees and Consumers. All such recordings shall be maintained for a minimum of four (4) months. In addition, all recordings related to calls with any Consumer who has made a Complaint and a random sample of 25% of all recordings shall be maintained for a minimum of two (2) years. Copies of any recordings shall be provided to the Texas Attorney General upon request.

3.12 **IT IS FURTHER ORDERED THAT** Defendants shall establish a training program designed to instruct employees who engage in any type of communication with Consumers in the requirements of the law pertaining to conduct with Consumers and in the terms of this Agreed Final Judgment and Permanent Injunction. Attendance at the training program shall be mandatory for all employees who engage in such communication, and any manager who directly or indirectly supervises such employees. The program shall be in place, and all current employees who are required to take such training shall have completed the training within thirty (30) calendar days of

the Effective Date of this Agreed Final Judgment and Permanent Injunction. All future employees who are required to take such training shall complete the training within thirty (30) calendar days of the date of beginning employment with Defendants unless the employee is terminated or leaves employment prior to the 30th day. New hires shall not be permitted to communicate with Consumers until such training is completed. The training program shall include:

- A. Detailed instructions in the requirements and prohibitions contained in this Agreed Final Judgment and Permanent Injunction;
- B. Detailed instructions in the purpose of, prohibitions contained in, and potential liability for any violation of this Agreed Final Judgment and Permanent Injunction regarding the misrepresentation of Defendants' goods, including but not limited to misrepresentations regarding availability, cost, type, model, and quality of such goods;
- C. Review of the then-current Web site terms and conditions; and
- D. Notice of the terms of this Agreed Final Judgment and Permanent Injunction to all of Defendants' employees that participate in this training. Defendants shall post the terms of this Agreed Final Judgment and Permanent Injunction in the employee notice area where it shall be easily available to employees responsible for responding to Consumer complaints, approving Web site disclosures, and engaging in any communication with Consumers.

Compliance Reporting by Defendant

3.13 **IT IS FURTHER ORDERED** that within 60 days of the Effective Date of this

Agreed Final Judgment and Permanent Injunction, the Compliance Employee for each of the Defendants shall submit to the Texas Attorney General, directed to the undersigned Assistant Attorney General, a sworn, written statement describing in detail the practices and procedures in place to ensure compliance with each and every term of this Agreed Final Judgment and Permanent Injunction.

3.14 For a period of three (3) years from the Effective Date of this Agreed Final Judgment and Permanent Injunction, Defendants shall provide quarterly reports to the Attorney General's Consumer Protection and Public Health Division-Austin, directed to the undersigned Assistant Attorney General, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Agreed Final Judgment and Permanent Injunction. For this three-year term and for 90 days following the receipt of the final report, the Texas Attorney General's Consumer Protection and Public Health Division shall have access upon written request to any of the documents and materials related to this report. This report shall include:

- A. Documentation of the training program developed and implemented by the Defendants pursuant to Section 3.12 of by this Agreed Final Judgment and Permanent Injunction;
- B. A list of all currently active Web sites Defendants use to promote, advertise, offer for sale, sell, or distribute any goods or services;
- C. A list of all names that Defendants are using to advertise, offer for sale, sell, or distribute any goods or services;
- D. A list of all Price Comparison Web sites that Defendants are using or with

which Defendants have an agreement;

- E. Copies of all Consumer complaints not submitted in a previous report. Defendants shall include a summary of each complaint, the name, address, and phone number of each complainant, and a copy of all sales recordings that relate to the complaint;
- F. To the extent not already provided in a previous report, a list identifying each employee of a Defendant who was terminated or disciplined since the Effective Date of the Judgment for any reason related to the subject matter of this Judgment. Such list shall include the name of the person, the discipline they received, and the reason for such discipline.

4. RESTITUTION

4.1 A Defendant shall provide restitution to each of its Qualified Consumers by sending an offer letter and claim form (attached hereto as Exhibit A) to each Qualified Consumer within 45 days of the Effective Date or within 45 days after receipt of a Qualified Consumer's complaint which complaint was received within 90 days of the Effective Date, whichever is later. Defendants shall send the offer letter and claim form to each Qualified Consumer via email message and first class mail (if the Qualified Consumer's email address and physical address is available). The subject line of any such email message shall contain the phrase "Settlement Offer." On any first-class mail envelope sent pursuant to this section, the phrase "Settlement Offer" shall appear under the business's name. The letter shall contain letterhead from the business entity that was the subject of the Qualified Consumer's complaint. The Defendants shall inform the Consumers that, following

receipt of any settlement offer, the Consumer has forty-five (45) days to respond or the original offer is deemed accepted.

4.2 In the event that a complaint cannot be resolved between a Defendant and Qualified Consumer or if a Qualified Consumer chooses, the complaint shall be forwarded to a neutral third party, mutually agreed upon by Plaintiff and Defendant ("Mediator"). Defendant agree to pay all reasonable costs associated with and assessed by the Mediator. Complaints shall be forwarded to the Mediator within ten days of the date the Qualified Consumer rejects Defendant's offer or requests the Mediator. Within 45 days, the Mediator shall conduct a paper review of the complaint, Defendant's response, if any, and any other documents requested by the Mediator, and shall make a recommended resolution for each complaint. The Consumer and Defendant shall provide the Mediator with any requested documents in a timely manner. Plaintiff, the Consumer, and the Defendant shall not engage in ex parte communications with the Mediator regarding any specific complaint. Defendant shall be bound by the Mediator's recommended resolution of such complaint, including appropriate restitution. If the Qualified Consumer accepts the Mediator's recommendation, payment of same shall constitute full satisfaction of the Qualified Consumer's complaint. However, Qualified Consumers shall not be bound to the Mediator's recommended resolution.

4.3 Any cash restitution shall be mailed directly to each Qualified Consumer within 15 days of a Qualified Consumer's acceptance of either Defendant's restitution offer or the restitution as determined by the Mediator.

4.4 On or before 270 days after the Effective Date, the Defendant shall provide to the

Office of the Texas Attorney General a written report regarding restitution which shall include:

- A. a list of all Qualified Consumers to whom it made refunds, along with the amount each such Qualified Consumer received; and
- B. a list of all Consumers who filed a complaint but whom Defendant determined was not a Qualified Consumer, including the reason for such determination (e.g. because the Consumer has already had his or her complaint resolved).

Upon request, Defendant shall provide to the Attorney General copies of all offers Defendant made pursuant to the restitution program (i.e., the completed letter portion of Exhibit A sent to Consumers), returned claim forms (i.e., the completed claim form portion of Exhibit A returned to a Defendant by a Qualified Consumer), and written mediator decisions (if applicable).

5. CIVIL PENALTIES AND ATTORNEY'S FEES

5.1 **Judgment is hereby ordered against Defendants.** It is ordered that Defendant A&M Photo World, LLC shall pay One Hundred Thousand Dollars (\$100,000) to the State of Texas as follows:

5.1.1 Civil Penalties in the amount of Thirty Five Thousand Dollars (\$35,000) to the State of Texas as a civil penalty in a matter actionable under Subchapter E, Chapter 17 of the TEXAS BUSINESS & COMMERCE CODE as that phrase is used in TEXAS GOVERNMENT CODE, Section 402.007(b) which requires such funds to be credited to the judicial fund for programs approved by the Texas Supreme Court that provide basic civil legal services to the indigent.

5.1.2 The sum of Sixty Five Thousand Dollars (\$65,000) for attorney's fees and costs of

investigation.

5.2 Plaintiff acknowledges receipt of payment from Defendant, satisfying Paragraph 5.1.

6. MISCELLANEOUS PROVISIONS

6.1 This Agreed Final Judgment and Permanent Injunction shall fully and finally settle all claims of illegal, misleading, or otherwise prohibited acts alleged in the lawsuit. The scope of this lawsuit is limited to persons in Texas.

6.2 Defendants shall not effect any change in their forms of doing business or their organizational identities as a method of avoiding the terms and conditions set forth in this Agreed Final Judgment and Permanent Injunction.

6.3 A copy of the Web site terms and conditions current as of the Effective Date is attached to this Agreed Final Judgment and Permanent Injunction. Nothing in this Agreed Final Judgment and Permanent Injunction shall be construed to prohibit Defendants from changing the terms and conditions as long as the change is reasonably consistent with the terms of this Agreed Final Judgment and Permanent Injunction.

6.4 Any notice to a party shall be provided by hand delivery, telefax, or overnight delivery by a recognized courier service, and shall be addressed to the following until an updated contact is provided by the party:

To the Texas Attorney General:

Corey David Kintzer
Assistant Attorney General
Office of the Attorney General
Consumer Protection & Public Health Division
300 W. 15th Street,
Austin, Texas 78701
(512) 473-8301 (facsimile)

To any Defendant:

Isaac Farkas
245 Belmont Dr
Somerset, NJ 08873
To Albert Houllou:

To Albert Houllou:

Albert Houllou
1643 East 28th St
Brooklyn, NY 11229

With a copy to:

Edward D. ("Ed") Burbach
Gardere Wynne Sewell, LLP
600 Congress Avenue, Suite 2900
Austin, Texas 78701-2978
(512) 542-7270 (facsimile)

6.5 This Agreed Final Judgment and Permanent Injunction constitutes the entire agreement between the parties with regard to terminating the investigation and fully resolving the lawsuit.

6.6 With respect to Defendants' practices alleged herein, nothing in this Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Defendants.

6.7 No representations, warranties, or inducements have been made by the Texas Attorney General to Defendants and no representations, warranties, or inducements have been made by Defendants to the Texas Attorney General concerning this Agreed Final Judgment and Permanent Injunction, other than those representations, warranties, and covenants contained in this Agreed Final

Judgment and Permanent Injunction.

6.8 If any clause, provision, or section of this Agreed Final Judgment and Permanent Injunction shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Agreed Final Judgment and Permanent Injunction, and this Agreed Final Judgment and Permanent Injunction shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

6.9 To seek a modification or termination of this Agreed Final Judgment and Permanent Injunction for any reason, any Defendant seeking said modification or termination shall send a written request to the State in accordance with the Notice provisions of this Agreed Final Judgment and Permanent Injunction. The State shall make a good faith evaluation of the then existing circumstances, and after collecting information the State reasonably deems necessary, make a prompt decision as to whether to agree to the modification or termination of this Agreed Final Judgment and Permanent Injunction. In the event the State timely denies the modification or termination, or does not respond within 90 days of the request or the date a Defendant provides the information the State reasonably deems necessary, whichever is later, any Defendant may seek such modification or termination from this Court and every Defendant reserves all rights to pursue any legal or equitable remedies that may be available to it or them. No waiver, termination, modification, or amendment of the terms of this Agreed Final Judgment and Permanent Injunction shall be valid or binding unless made by order of the Court; provided, however, the parties may agree to a shortening or extension of any time periods in this Agreed Final Judgment and Permanent Injunction without an order of the Court.

6.10 Any failure by any party to this Agreed Final Judgment and Permanent Injunction to insist on strict performance by any other party of any provision of this Agreed Final Judgment and Permanent Injunction shall not be deemed a future waiver of any of the provisions of this Agreed Final Judgment and Permanent Injunction, and such party, notwithstanding such failure, shall have the right to insist upon the specific performance of any and all of the provisions of this Agreed Final Judgment and Permanent Injunction.

6.11 To the extent that any provision of this Agreed Final Judgment and Permanent Injunction conflicts with any local or federal law, such law and not this Agreed Final Judgment and Permanent Injunction shall apply where such conflict exists. For the purposes of this Agreed Final Judgment and Permanent Injunction, a conflict exists if conduct prohibited by this Agreed Final Judgment and Permanent Injunction is required or expressly permitted by such law, or if conduct required by this Agreed Final Judgment and Permanent Injunction is prohibited by such law.

6.12 Plaintiff is authorized to monitor compliance with this Agreed Final Judgment and Permanent Injunction by all lawful means, including but not limited to, posing as a Consumer in any communication with Defendants, Defendants' employees or agents, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice to Defendants or Defendants' counsel.

6.13 The Defendants shall not represent to the public that this Agreed Final Judgment and Permanent Injunction constitutes approval by Plaintiff or this Court of any of Defendants' actions or business activities.

6.14 All costs of court expended or incurred in this cause are adjudged against the party incurring same.

6.15 After signing and entry by the Court, this agreement constitutes a final judgment.

6.16 All relief not expressly granted herein is denied.

SIGNED this _____ day of _____, 2011.

PRESIDING JUDGE

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

PLAINTIFF:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection & Public Health Division

COREY DAVID KINTZER
State Bar No. 24046219
Assistant Attorney General
Office of the Attorney General
Consumer Protection & Public Health
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185 (telephone)
(512) 473-8301 (facsimile)

DEFENDANTS:

BROADWAY PHOTO, LLC,
A&M PHOTO WORLD, LLC,
DIGITAL LIQUIDATORS, LLC,
PREFERRED PHOTO, LLC,
PRESTIGE CAMERA, LLC,
CAMERA ADDICT, LLC,
TOP CHOICE DIGITAL WORLD, LLC,
TOP CHOICE DIGITAL ENTERPRISE, LLC
REGAL CAMERA, LLC,
MILLENNIUM CAMERA, LLC,
QWEST CAMERA, LLC, and
WILD DIGITAL, LLC,


Isaac Earkas
Authorized Representative

ALBERT HOULLOU




Edward D. ("Ed") Burbach
State Bar No. 03355250
Gardere Wynne Sewell, LLP
600 Congress Avenue, Suite 2900
Austin, Texas 78701-2978
(512) 542-7070 (telephone)
(512) 542-7270 (facsimile)
Counsel for Defendant Broadway Photo, LLC

EXHIBIT "A"

[NAME & ADDRESS OR E-MAIL]

Dear Texas Customer,

As part of a settlement agreement we reached with the Texas Attorney General's Office, we are writing to offer you a resolution to the complaint that you made against our business. As such, we offer you \$_____ in full resolution of your complaint. Please promptly respond within 45 days of receiving this message, confirming that this offer is acceptable to you. Please indicate your decision on the attached claims form and return it to the following email or physical address:

If we do not hear back from you within 45 days, we will conclude that our offer is acceptable.

In the event that you do not accept this offer, you have the right to have your complaint forwarded to a neutral third-party to resolve your complaint. The neutral third-party will, at our

expense, conduct a paper review of your complaint and offer an alternative resolution. This alternative process will not cost you any additional money. You will also not be required to accept the third-party's alternative resolution, however, and may still pursue your complaint through other available means.

If you have any questions or concerns regarding this offer, please contact the Texas Attorney General's Office at 1-800-252-8011 or by email message at public.information@oag.state.tx.us.

CLAIM FORM

I, (Print Name) _____, have reviewed your offer to settle my complaint.

(Make your decision by circling one number below)

1. I ACCEPT your offer as a full resolution of my complaint.
2. I REJECT your offer and want a NEUTRAL THIRD-PARTY to conduct a paper review of my complaint.

(Signature)

AUSTIN 47784v.1