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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

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

11 Plaintiff,

12 vs.

13 NAMASTE GROUP, LLC, an Arizona limited
14 liability company;

15 SOUTHWEST MARKETING
16 TECHNOLOGY, LLC, an Arizona limited
liability company;

17 KILOH R. SMITH, individually and as a *de*
18 *facto* member and manager of Namaste Group,
LLC and Southwest Marketing Technology,
LLC;

19 JANE DOE SMITH, wife of Kiloh R. Smith;

20 ABC CORPORATIONS 1-25,

21 Defendants, and

22 NEW YORK COMMUNITY BANK;

23 Relief Defendant.
24

Case No.: CV2014-007208

STIPULATED CONSENT JUDGMENT

Assigned to the Hon. Randall Warner

25 The State of Arizona filed a complaint alleging that Defendants Namaste Group, LLC,
26 Southwest Marketing Technology, LLC, and Kiloh Smith violated the Arizona Consumer

1 Fraud Act, Arizona Revised Statutes (“A.R.S.”) §§ 44-1521, *et seq.*, and the Telephone
2 Solicitation statute, A.R.S. §§ 44-1271. The Defendants were fully advised of their right to
3 trial in this matter and have waived same, admit jurisdiction of this Court, and stipulate that the
4 Court may enter the following Findings of Fact, Conclusions of Law and Judgment.

5 For purposes of this Consent Judgment, references to “Defendant” or “Defendants” do
6 not include the named Relief Defendant in this case.

7 Whenever in this Consent Judgment reference is made to any act of a Defendant, such
8 reference shall be deemed to mean the personal acts of the referenced Defendant, or the acts of
9 the Defendant’s members, managers, employees, agents, or other representatives, acting within
10 the scope of their employment or authority.

11 For the purposes of this Consent Judgment, “business opportunity” is synonymous in
12 meaning to the definition of the term located at A.R.S. § 44-1271(1).

13 FINDINGS OF FACT

14 1. Defendant Namaste Group, LLC (“Namaste”) is an Arizona Limited Liability
15 Company that, after August 4, 2012,¹ did business in Maricopa County, Arizona, soliciting
16 consumers over the telephone to purchase work-at-home business opportunities and, in fact,
17 sold such business opportunities to consumers.

18 2. Defendant Southwest Marketing Technology, LLC (“Southwest Marketing”) is
19 an Arizona Limited Liability Company that, after August 4, 2012, did business in Maricopa
20 County, Arizona, soliciting consumers over the telephone to purchase work-at-home business
21 opportunities and, in fact, sold such business opportunities to consumers.

22 3. Defendant Kiloh Smith (“Smith”) resides in Maricopa County, Arizona, and is
23 the named member and manager of Namaste and the *de facto* member and manager of
24

25 ¹ Amendments to the Arizona Telephone Solicitation statute that apply to sellers of business opportunities took effect on
26 August 4, 2012, and such amendments are the basis for several of the State’s allegations against the Defendants.

1 Southwest Marketing. At all times relevant to the acts and practices alleged in the State's
2 Verified Complaint, Smith formulated, directed, ratified, controlled, had the authority to
3 control, or participated in the acts and practices of Namaste and Southwest Marketing.

4 4. Defendants Namaste and Southwest Marketing, as sellers of business
5 opportunities, were required to file a verified registration statement with the Arizona Secretary
6 of State as set forth in A.R.S. § 44-1272, were not exempt from such requirement, and failed to
7 comply with such requirement.

8 5. Defendants Namaste and Southwest Marketing, as sellers of business
9 opportunities, were required to file a one hundred thousand dollar (\$100,000) bond, or a cash
10 equivalent, with the Arizona State Treasurer as set forth in A.R.S. § 44-1274, were not exempt
11 from such requirement, and failed to comply with such requirement.

12 6. Defendants Namaste and Southwest Marketing, as sellers of business
13 opportunities, were required to provide consumers verbal and written notice of the consumers'
14 right to cancel their purchase from Namaste and Southwest Marketing and failed to do so,
15 rendering those sales void, pursuant to A.R.S. § 44-1276.

16 7. Defendants Namaste and Southwest Marketing, as sellers of business
17 opportunities, were required to provide consumers with a written business opportunity
18 disclosure statement at least five business days before the consumer executed a contract with
19 them, before the consumers paid monies or anything of value to them, or before the consumers
20 authorized Namaste or Southwest to charge their credit or debit card. Namaste and Southwest
21 Marketing failed to provide consumers with the business opportunity disclosure statements
22 described herein.

23 8. Defendants Namaste and Southwest Marketing, as sellers of business
24 opportunities, were required to provide consumers who agreed to purchase a business
25 opportunity with a written contract that complies with A.R.S. § 44-1276.02 and failed to do so.

26 //

1 **CONCLUSIONS OF LAW**

2 9. The Defendants' actions described herein constitute violations of the Arizona
3 Telephone Solicitations statute, A.R.S. §§ 44-1271, *et seq.* and, separately, violations of the
4 Arizona Consumer Fraud Act, pursuant to A.R.S. § 44-1278(C).

5 10. Namaste, Southwest Marketing, and Smith acted willfully in all matters
6 described herein, thereby subjecting themselves to enforcement and penalties as provided in
7 A.R.S. § 44-1531(A).

8 **ORDER**

9 Now, therefore, it is ordered, adjudged and decreed that:

10 1. Defendants Namaste, Southwest Marketing, Smith and, pursuant to Rule 65(h) of
11 the Arizona Rules of Civil Procedure, their respective officers, agents, servants, employees,
12 attorneys, and those persons in active concert or participation with them are prohibited from:

13 a. Engaging in any conduct in violation of A.R.S. §§ 44-1521, *et seq.* or
14 §§ 44-1271, *et seq.*;

15 b. Engaging in, receiving any remuneration of any kind whatsoever from,
16 holding any ownership interest, share or stock in, or serving as an officer, director, or
17 trustee of, any business entity engaged, in whole or in part, in the sale of any business
18 opportunity, including goods, services or merchandise related to a business opportunity,
19 from the State of Arizona or to any Arizona consumer;

20 c. Engaging in any business in Arizona that includes outbound telemarketing
21 as a means to generate sales;

22 d. Making or participating in any outbound telemarketing calls from the
23 State of Arizona or to any resident of Arizona;

24 e. Providing to any person, including any natural person or his legal
25 representative, any partnership, domestic or foreign corporation, any company, trust,
26 business entity, or association, any agent, employee, salesman, partner, officer, director,

1 member, stockholder, associate, or trustee, other than a law-enforcement agency, the
2 name, address, telephone number, social security number, or credit card or bank account
3 number of any consumer who provided such information to, or did business with,
4 Namaste or Southwest Marketing, or any of Namaste's or Southwest Marketing's
5 successors, assigns, agents, employees, officers, servants and persons who acted in
6 concert or participation with them;

7 f. Engaging in payment processing for any third party or acting as an
8 Independent Sales Organization (ISO), and;

9 g. Contesting any consumer's chargeback request with the consumer's credit
10 card company or bank that stems from the consumer's purchase of products or services
11 from Namaste or Southwest Marketing.

12 2. Plaintiff is awarded restitution against Namaste, Southwest Marketing and Smith,
13 jointly and severally, in the amount of fifteen thousand, six hundred and eighty-eight dollars
14 (\$15,688), payable pursuant to the payment schedule ordered in paragraph five, below. All
15 restitution payments shall be deposited by the Attorney General into the restitution sub-account
16 of the consumer restitution and remediation revolving fund pursuant to A.R.S. § 44-1531.02
17 (B). All restitution amounts awarded herein shall be distributed, on a pro rata basis, by the
18 Attorney General's Office to all eligible consumers. "Eligible consumers" are those consumers
19 who filed a complaint with the Office of the Arizona Attorney General before April 24, 2014
20 (the date the State's Verified Complaint was filed in this matter) and who purchased a business
21 opportunity from Namaste or Southwest Marketing Technology on or after August 4, 2012.
22 The amount of restitution due each eligible consumer is within the sole discretion of the
23 Attorney General. Any restitution that cannot be distributed by the Office of the Attorney
24 General within six months from final resolution of this lawsuit shall revert to the consumer
25 protection – consumer fraud revolving fund, pursuant to A.R.S. § 44-1531.01, as civil penalties
26 and used for the purposes set forth therein.

1 3. Plaintiff is awarded attorneys' fees and costs against Namaste, Southwest
2 Marketing and Smith, jointly and severally, in the sum of one thousand dollars (\$1,000),
3 payable pursuant to the payment schedule ordered in paragraph five, below. All payments for
4 fees and costs ordered herein shall be deposited in the consumer protection – consumer fraud
5 revolving fund, pursuant to A.R.S. § 44-1534.01, and used for the purposes set forth therein.

6 4. Plaintiff is awarded civil penalties against Namaste, Southwest Marketing and
7 Smith, in the sum of five thousand dollars (\$5,000), payable pursuant to the payment schedule
8 ordered in paragraph five, below. All payments for civil penalties ordered herein shall be
9 deposited in the consumer protection – consumer fraud revolving fund, pursuant to A.R.S.
10 § 44-1534.01, and used for the purposes set forth therein. For purposes of this paragraph and
11 any subsequent proceedings to enforce payment of the civil penalties ordered herein, including
12 but not limited to a non-dischargeability complaint filed in a bankruptcy proceeding, Namaste,
13 Southwest Marketing and Smith waive any right to contest such proceeding or allegations in a
14 non-dischargeability complaint.

15 5. The payments ordered herein, totaling twenty-one thousand six hundred eighty-
16 eight dollars (\$21,688.00), shall be made payable to the Office of the Arizona Attorney
17 General according to the following schedule: within ten (10) days from the date the Court
18 approves this Consent Judgment, an initial payment of eight hundred dollars (\$800.00) shall be
19 paid, followed by twenty-five additional payments in the amount of eight hundred
20 dollars (\$800.00) each, and one final payment in the amount of eight hundred eighty-eight
21 dollars (\$888.00), due on the first day of the immediate twenty-six subsequent months after the
22 date of the initial payment.

23 6. The State shall allocate payments received pursuant to this Consent Judgment
24 first to restitution, then to civil penalties, and then to attorneys' fees and costs.

25 7. In the event of a default of any payment obligation imposed by this Consent
26 Judgment, and in addition to any other relief or remedy elected or pursued by the State, all

1 payments set forth herein shall be accelerated and shall become due and owing in their entirety
2 as of the date of the default, with interest accruing at the rate of ten percent (10%) per annum
3 for the full amount owing as of that date.

4 8. The State acknowledges by its execution hereof that this Consent Judgment
5 constitutes a complete settlement of its allegations against the Defendants and it agrees that it
6 shall not institute any additional civil action against them based on their alleged violations of
7 the Arizona Consumer Fraud Act or the Arizona Telephone Solicitations statute, as alleged in
8 the State's Verified Complaint in this matter.

9 9. Notwithstanding the foregoing, the State may institute an action or proceeding to
10 enforce the terms and provisions of this Consent Judgment, or to take action based on future
11 conduct by the Defendants.

12 10. Jurisdiction is retained by this Court for the purpose of entertaining an
13 application by Plaintiff for the enforcement of this Judgment

14 11. This Consent Judgment is entered as the result of a compromise and a settlement
15 agreement between the parties. Only the parties to this action may seek enforcement of this
16 Consent Judgment. Nothing herein is intended to create a private right of action by other
17 parties.

18 12. This Consent Judgment shall not limit the rights of any private party to pursue
19 any remedies allowed by law.

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

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14. IT IS FURTHER ORDERED that upon entry of this Consent Judgment, the Temporary Restraining Order issued by this court on April 24, 2014, and all of its provisions, shall be lifted permanently, other than those provisions that are contained in this Consent Judgment as permanent injunctions.

Dated this _____ day of _____, 2014.

Hon. Randall H. Warner

CONSENT TO JUDGMENT

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

6 2. Defendants Namaste, Southwest Marketing and Smith admit the jurisdiction of
7 the Court and consent to the entry of the foregoing judgment.

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

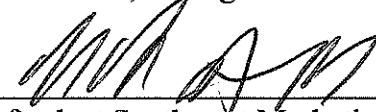
11 4. Defendants Namaste, Southwest Marketing and Smith acknowledge that their
12 acceptance of this Consent Judgment is solely for the purpose of settling this litigation and
13 does not preclude any other agency or officer of this State, or subdivision thereof, from
14 instituting other civil or criminal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

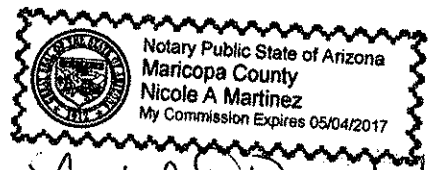
15 5. Namaste and Southwest Marketing represent and warrant that the person signing
16 below on their behalf is duly appointed and authorized to do so

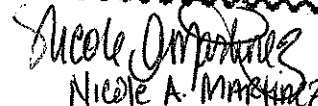
17 Dated this 18 day of June, 2014.

18
19 
20 _____
Defendant Kiloh Smith

21 By: 
22 _____
Defendant Namaste Group, LLC
Kiloh Smith, Manager

23
24 By: 
25 _____
Defendant Southwest Marketing Technology, LLC
Kiloh Smith, Manager



 6/18/14
Nicole A. Martinez
exp. 5/4/17

1 **APPROVED AS TO FORM AND CONTENT:**

2 **Thomas C. Horne**
3 **Attorney General**

4
5 By: 

6 Cherie Howe
7 Assistant Attorney General

8
9 #3805029

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eSignature Page 1 of 1

Filing ID: 5945538 Case Number: CV2014-007208
Original Filing ID: 5939746

Granted as Submitted



/S/ Randall Warner Date: 6/23/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2014-007208

SIGNATURE DATE: 6/23/2014

E-FILING ID #: 5945538

FILED DATE: 6/24/2014 8:00:00 AM

CHERIE L HOWE

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