

EXHIBIT E

COPY

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL DIVISION

FILED 02
COLLIER COUNTY, FLORIDA
2010 JUL -9 PM 2:58
CLERK OF COURTS
D.C.

RANDY GUFFEY, an individual, on his own
behalf and on behalf of all others similarly situated,

Plaintiff,

v.

Case No. 10-4218 CA

PACIFIC WEBWORKS, INC., a Nevada company
and JOHN DOE DEFENDANT.

CLASS ACTION

Defendants.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Randy Guffey brings this Class Action Complaint, seeking class certification and adjudication pursuant to Fla. R. Civ. P. 1.220, against Defendants Pacific Webworks, Inc., a Nevada and John Doe Defendant, and based upon Defendants' practice of deceptively billing Plaintiff and similarly-situated others for unauthorized charges. Plaintiff, for his Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his own attorneys.

Parties

1. Plaintiff Randy Guffey is a resident of Naples, Florida.
2. Defendant Pacific WebWorks, Inc. is an online provider of work-at-home products marketed to consumers nationwide. Pacific WebWorks is a Nevada corporation headquartered in and having its principal place of business at 230 West 400 South, 1st Floor, Salt

Lake City, Utah 84101 ("Pacific WebWorks"). It does business in the State of Florida and nationwide.

3. John Doe Defendant is an online advertising network that participates in the acts and practices that are the subject of Plaintiff's complaint. John Doe Defendant participated in the deceptive acts and practices that victimized Plaintiff. On information and belief, John Doe Defendant is one of the following corporations or corporate d/b/a's: (1) Tracking202, Inc.; (2) Media Trust LLC (Advaliant); (3) CyberPlex Inc. (CX Digital Media); (4) Coleadium, Inc. (Ads4Dough); (5) JAR Media LLC; (6) Sybtrack.com; (7) eSynergy Media LLC; (8) W4 Media LLC; (9) Bskytracking.com; (10) GMB Direct, Inc.; (11) Elite Clicks Media LLC; (12) Tracklead.net; (13) Track606.com; (14) Intermark Communications, Inc. (Copeac); (15) Zoomleads.net; (16) Vertrue Incorporated (Neverblue); (17) Lidango; and (18) Convert2Media LLC.

Jurisdiction and Venue

4. The amount in controversy exceeds the sum of \$15,000 exclusive of interest, costs and attorney's fees. This Court has jurisdiction over the subject matter.

5. This Court has personal jurisdiction over this action pursuant to Section 48.193(1)(a), Florida Statutes, because Defendants do business in this state and because Plaintiff is a resident of Florida.

6. Venue is proper in Collier County, Florida, because Defendant does business in Collier County and/or because the cause of action arose here.

Facts Common to All Counts

7. With unemployment rising and wages stagnant, Americans are suffering through the worst economy in decades. In these hard times, ordinary consumers are more than ever

subjected to a proliferation of work-at-home offers that promise the ability to easily make thousands of dollars from at-home businesses.

8. The offers hosted by Pacific WebWorks state that consumers will work directly with, and be well-paid by, the giant web search engine Google. The ability to work for this enormously successful company reasonably supports the promise of good income described in the offers from Defendants.

9. Defendants' offers begin as initial representations made through a common deceptive scheme constituting spam email offers, sponsored links, banner ads on internet search pages, and links in fake news articles and fake blogs. The purpose of each of these initial representations is to drive consumer traffic to credit card submit landing pages at which a purchase can be made.

10. These sponsored links, banner ads, fake news articles, and similar methods of gaining a consumer's attention are created and operated by a group of affiliate marketers and ad networks whose sole objective is to drive traffic to merchant landing pages such as those selling Pacific WebWorks's products. John Doe Defendant acts in this space as an ad network and/or affiliate marketer and, in that capacity, actively drives traffic to Pacific WebWorks's websites for its own monetary gain. The relationship between Pacific WebWorks on the one hand, and John Doe Defendant on the other, is one of interdependence: Pacific WebWorks needs the ad network to market to, and contract with, affiliate publishers who further propagate the deception through fake news articles and blogs; likewise, John Doe Defendant needs Pacific WebWorks to monetize the consumer traffic through purchases and thereafter remit payment to the ad network.

11. Defendant Pacific WebWorks and John Doe Defendant work together to "optimize" transaction pages so as to drive ever-higher rates of purchase. Both are motivated to

take this active role because the sales revenue generated on a Pacific WebWorks site is the only way that Pacific WebWorks and the upstream ad networks are compensated. Therefore, John Doe Defendant has a vested interest in not only directing consumers to the product page, but also in actively ensuring that a consumer purchases the product. This optimization can include changing the design of ad pages in the order path including the color, words used, placement of words, font size, placement of the Terms of Service, and the use of “pressures” like “You Qualify for Instant Access!” and “...these kits are going FAST!,” or the use of running timers counting down the minutes left before an offer “expires.” Such pressures are simply fabrications and are dynamically inserted into the website at specified screen locations to further drive sales.

12. John Doe Defendant’s “affiliate managers” and other representative employees communicate directly with the affiliate publishers who create deceptive advertising (such as sponsored links and fake news articles and blogs) for the purpose of matching them with the highest converting merchant offers (usually the most deceptive), and helping them design their advertising materials by providing templates and ad copy. At the same time, John Doe Defendant communicates with merchants like Pacific WebWorks so as to 1) match their transaction pages with publishers’ advertising pages and 2) design the merchant’s transaction pages for higher conversion rates (making them more deceptive). These affiliate managers have full visibility and knowledge of the deceptive advertisements used to drive traffic to work-at-home offers and, likewise, full knowledge and visibility of the deceptive nature of merchants’ transaction pages.

13. As a primary inducement, consumers are often simply responding to the many initial representations and screenshots that appear to state a relationship with Google itself within order paths managed by John Doe Defendant. The use of Google’s name in this manner, and

specifically the prospect of working for one of the world's most successful companies, appears as a primary non-price inducement to deceptively entice consumers to purchase the Pacific WebWorks product.

14. After a consumer is directed by John Doe Defendant to a Pacific WebWorks landing page displaying a work-at-home offer, Pacific WebWorks pushes a product, often a CD or software kit, purportedly designed to enable consumers to "Earn up to \$978 or more a day using GOOGLE," "Work from Home & learn to make \$1000s a day using GOOGLE!," and "Anyone with a computer and basic typing skills can make money using Google!"

15. Representations that drive consumers to these landing pages promise "\$5500 a month job Working from Home Job: requires basic computer skills." Banner ads even promise "scam free" offers that link to landing pages used by Pacific Webworks on which consumers are promised products at prices that are not, in fact, remotely close to the actual price charged.

16. These landing pages typically contain language describing their offering "As seen on: Fox News, CNN," and "USAToday." The website prominently features network logos without license from these media entities and are plainly designed to suggest to a consumer that the offering is supported by a reputable entity. Pacific WebWorks products have never been "seen on" or endorsed by any of the networks claimed on the website.

17. The initial landing page seen by a consumer is bright and welcoming, and promises "FAST CASH USING GOOGLE" and "HOME INCOME USING GOOGLE," among other pleasing inducements. (See Exhibit B). Representations that drive consumers to these landing pages within the order paths managed by John Doe Defendant promise "\$7500 a month Working from Home Job: requires basic computer skills." Banner ads even promise "scam free" offers that link to landing pages created by John Doe Defendant's business partners on which

consumers are promised Pacific WebWorks products at prices that are not, in fact, remotely close to the actual price charged by Pacific WebWorks.

18. Pacific Web Works's landing pages contain a testimonial photo of a consumer that benefited from Defendants' products. In fact, this photo is a fake, inasmuch as Defendant simply uses a stock photo (commonly available at websites like iStockPhoto.com) and fabricates the testimonial.

19. In furtherance of the deception, Pacific Web Works's landing pages may be reached from embedded links in fake blog testimonials ("flogs") and fake news articles with, again, stock photos and testimonials purportedly representing actual consumers from one's own city or state. These consumers relate stories of terrific success using the Pacific WebWorks product. (See Exhibit A). Examples of these flogs and fake news articles deceptively used to sell Pacific WebWorks's products are:

a. "San Diego Herald News" found at <http://world-jobs-report.com>, tells the story of Mary Steadman,¹ an "Account Rep laid off from a large Manufacturing company, [who] is

¹ "Mary Steadman," the most widely used fake person in fake news articles selling work-at-home products, is also featured or has been featured on the following fake news sites, and at least 90 more websites all across the internet:

www.FloridaJobHerald.com, www.Miami-Gazette.com, www.Miami5News.com, www.MiamiCityPost.com, www.MiamiCityPostToday.com, www.MiamiFinancePost.com, www.MiamiGazetteNews.com, www.MiamiJobJournal.com, www.MiamiSunSentinel.com, www.MiamiTribuneNews.net, www.Orlando-Tribune.com, www.OrlandoGazetteNews.com, www.OrlandoInquirer.com, www.OrlandoWebTimes.com, www.TheMiamiGazetteNews.com, www.new-york-gazette.com, www.SanFrancisco-Tribune.com, www.SanFranciscoCityHerald.com, www.Sandiego-Tribune-News.com, www.SanDiego-Tribune.com, www.SanJose-Herald.com, www.SanJose-Times.com, www.TheLosAngelesJournal.com, www.LosAngelesTribuneNews.com, www.LosAngelesNews7.com, www.LosAngelesFinanceNews.com, www.Los-Angeles-Weekly.com, www.LosAngelesDispatch.com, www.4KWeekIn3Steps.com, www.Action7Journal.com, www.AmericaFinanceNews.com, www.AmericaJobJournal.com, www.AmericaNewsDaily.com, www.B12-Media.com, www.BargainBoomer.com, www.Best-Job-In.com, www.BirminghamTribune.co.uk, www.Boston-BusinessNews.com, www.Boston-Tribune.com, www.BostonFinanceNews.com, www.BostonGazetteNews.com, www.OrlandoWebTimes.com, www.ReadSomeNews.com, www.Online-Job-News.com, www.NYGazetteNews.com, www.NewYorkPostHerald.com, www.NewYorkPostHerald.com.

thriving in the midst of an economic recession all the while working in the comfort of her own home” and claims to make \$9,875 a month posting links on Google.

b. “The Chicago IL Daily Advisor” in which “Nicole Johnson” tells how she “quit her boring job as a manufacturer’s representative” and “now makes \$5,500+ a month” using Pacific Webworks’s product, Google Biz Kit.

c. “Work From Home Review,” at ubossjob.com, warns “If you Do Not READ This, You May Get Scammed By Bogus Work-at-Home Opportunities!!!” The site, purporting to be a product review website, offers the Google Biz Kit as its “First Pick” and its top rated work-at-home program, stating “overall this website gets five stars.”

d. “Theresa Boyd.com,” at which “Theresa Boyd” describes “[w]hen I lost my job last year I spent almost a year trying to find a real, legitimate way to work at home. Instead, I kept getting scammed over and over (I lost nearly \$2,000). In March I finally found the only legitimate, scam-free way to work from home [Google Biz Kit]. I signed up and made \$1541.62 my first week!”

20. Pacific WebWorks also derives sales from online traffic routed through fake consumer review sites. At these sites, alleged “advocates” for consumers endorse Pacific WebWorks’s products with laudatory language and within the body of the fake reviews link to deceptive transaction pages for those products. John Doe Defendant provides the necessary conduit between the publishers of fake advertising materials and Pacific WebWorks by contracting with both parties to drive deceived consumers from the initial misrepresentations to a credit card submit page.

21. The online order path leading to Defendants' transaction pages are littered with pictures of individuals that testify to the success they have enjoyed using Pacific WebWorks’s

product. The individuals in Defendants' fake photos are not from the consumer's city or state; in fact, the specific locale represented is dynamically generated by instructions contained in the underlying source code for the screen page presented. That is, "Sara Stanley" from "Chicago" is in fact simply a fictitious person whose city name is generated by source code that recognizes and responds to the (Chicago) IP address of the consumer's computer.

22. A consumer is required to give Pacific WebWorks certain "personally identifying information" (PII) to "CHECK AVAILABILITY" of this "LIMITED TIME OFFER!" A consumer's submission of his PII enables Pacific WebWorks to sell this information to other marketers of goods and products. (See Exhibit B). Thus, a consumer actually does not have to "qualify" for anything, but is instead submitting to a lead generation process by which their PII (a "lead") is monetized by Pacific WebWorks and the consumer unknowingly "consents" to the receipt of additional email offers from an untold number of merchants, *i.e.*, anyone to whom Pacific WebWorks can sell this information.

23. The product offered by Pacific WebWorks is promised at the minimal price of \$2.00 or less, which is represented as covering all costs of the product.

24. Importantly, in order to cover this small charge, Pacific WebWorks requires that consumers give it a credit card number.

25. A consumer's credit card number is entered into a credit card submit field on an online transaction page (the transaction page most often directly follows the landing page – the order path may be understood as starting with the initial representation that drives traffic to the landing path where a consumer's PII is taken. A billing or transaction page completes the online order path). (See Exhibit C).

26. Materially, the only price representation clearly and conspicuously displayed on the credit card submit page or in proximity to the credit card submit box is a line that states "Total: \$1.97."

27. Calls to action like "LIMITED TIME OFFER!" and "WORK FROM HOME, SET YOUR OWN HOURS, THEN LIVE YOUR LIFE!" are found on these pages. These phrases are part of a static background image that are saved and displayed every time the page loads on a consumer's browser.

28. Compelling phrases including "Satisfaction Guaranteed," and "100% Trusted!" appear in large print scattered about the page.

29. Ultimately, a consumer reasonably understands that ordering the Pacific WebWorks product is an action that will cause them to incur a small charge on their credit card. In fact, this small price is simply bait for a credit card number that can then be used to impose additional charges on the consumer.

30. Though the actual price of a product is always material, in cooperating with each other, Pacific WebWorks and John Doe Defendant hide the real price of their product in small print on or under the transaction page or simply does not disclose it at all on this checkout page.

31. By simply submitting credit card information to Pacific WebWorks in payment of the discounted fee of \$1.97 (Defendant also offers identical products at \$.97, \$1.95, and \$2.95), a consumer unwittingly "agrees" to a monthly recurring charge of \$79.90 (also, in some instances, \$69.90) for access to a program purportedly containing information that enables a consumer to "Start Making Money Today!"

32. Materially, and wholly absent any clear and conspicuous price disclosure, consumers may also find that they have been billed \$24.90 by Defendant for another, unknown

product. This charge is recurring in that it appears every month on a consumer's bill. This undisclosed negative option, deceptively tied to a consumer's agreement to pay a small amount for a Pacific WebWorks product, is charged to consumers entirely without their authorization.

33. Only the charge of \$1.97 is clearly and conspicuously disclosed by Pacific WebWorks and John Doe Defendant to a consumer responding to the work-at-home offer.

34. Pacific WebWorks acts with John Doe Defendant to drive traffic to, promote, and sell its work-at-home product. Correspondingly, all Defendants optimize and continually oversee the creation of the deceptive advertisements concealing material terms and conditions, described herein, and all receive significant revenue from the sale of each poorly-disclosed Pacific WebWorks product.

35. Defendants know or should know that these ads and offers violate clearly established laws requiring, among other seminal concerns, that all material purchase terms be clearly and conspicuously disclosed to consumers.

36. Although Defendants use a number of specific paths and representations for their deception, each order path has a core, common underpinning; namely, that a consumer will only be charged \$1.97 for a work at home product sold by or directly associated with Google.

Facts Relating to Plaintiff Randy Guffey

37. During the relevant period, Plaintiff Randy Guffey viewed a pop-up advertisement promoting a work-at-home opportunity with Google. Plaintiff clicked on a sponsored link that took him to what appeared to be a news article describing the life-changing experience of a woman that utilized the Google Biz Kit system. Plaintiff understandably did not know that this page was a complete fabrication and designed solely to act as a deceptive advertisement. This "article" contained a link to the PII landing page described above and from

which Plaintiff reasonably understood that he could receive the Google Biz Kit product for \$1.97.

38. Plaintiff did not know that Google itself had nothing to do with this product nor did Plaintiff reasonably understand that, by agreeing to pay Defendants \$1.97, he also consented to be charged for products or services at an undisclosed price for an ongoing period.

39. Plaintiff did not authorize Defendants to bill his credit card for these additional charges. When Plaintiff discovered that he was billed a charge of \$69.90, Plaintiff attempted to call Pacific Webworks to cancel this charge.

40. Plaintiff Guffey called repeatedly over several days and finally spoke to a customer representative who told him that he had purchased unspecified services when he gave Pacific Webworks \$1.97 for its online e-book. The customer representative agreed to "cancel" his subscription for future billing but refused to refund the money withdrawn to date.

41. Plaintiff told the Google Biz Kit representative that he did not agree to pay \$69.90 and when he asked how they could charge his credit card for this product, he was told that he should have read the fine print on the website when he signed up for the e-book.

42. Plaintiff cancelled his credit card following this contact with the Pacific Webworks representative.

Amount in Controversy

43. Plaintiff makes no specific allegation that the amount in controversy (including requests for attorneys' fees, injunctive relief, etc.) exceeds any specific amount. Specifically, Plaintiff makes no allegations that the amount in controversy exceeds \$5,000,000.

Class Allegations

44. Plaintiff brings this action on behalf of himself, a Class, and one SubClass:

Pacific Webworks Class: Plaintiff brings this action on behalf of himself and a Class of similarly situated individuals, defined as follows:

All Florida residents who submitted credit card information to Pacific Webworks for the purpose of obtaining Pacific Webworks's products or services, and who were charged any amount other than a stated shipping and handling or discounted fee.

John Doe Defendant SubClass: Plaintiff brings this action on behalf of himself and a SubClass of similarly situated individuals, defined as follows:

All Florida residents who submitted credit card information to a Pacific WebWorks website for the purpose of obtaining Pacific WebWorks's products or services, who were charged any amount other than a stated shipping and handling or discounted fee, and that were traceably driven to a Pacific WebWorks website(s) by John Doe Defendant, or affiliate marketers acting through or in conjunction with John Doe Defendant.

Hereinafter, the above-described Class and SubClass may be stated as "Class" for purposes of this Complaint.

The following people are excluded from the Class and SubClass: 1) any Judge or Magistrate presiding over this action and members of their families; 2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; 3) persons who properly execute and file a timely request for exclusion from the class and 4) the legal representatives, successors or assigns of any such excluded persons.

45. **Numerosity:** The exact number of the members of the Class is unknown and not available to Plaintiff, but it is clear that individual joinder is impracticable. On information and belief, Defendants have deceived thousands of consumers who fall into the definition set forth in the Class. Members of the Class and SubClass can be identified through Defendants' records.

46. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class, as Plaintiff and other members sustained damages arising out of the wrongful conduct of

Defendant, based upon the same transactions which were made uniformly to Plaintiff and the public.

47. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class and SubClass, and Defendants has no defenses unique to Plaintiff.

48. **Predominance and Superiority:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. The damages suffered by the individual members of the Class and SubClass will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by the actions of Defendant. It would be virtually impossible for the individual members of the Class and SubClass to obtain effective relief from the misconduct of Defendant. Even if members of the Class and SubClass themselves could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

49. **Commonality:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect

individual members of the Class. Common questions for the Class include, but are not limited to the following:

- (a) Whether the Defendants' conduct described herein constitutes Fraud in the Inducement;
- (b) Whether the Defendants' conduct described herein constitutes Conspiracy to Commit Fraud in the Inducement;
- (c) Whether the Defendants' conduct described herein violates the Florida Deceptive and Unfair Trade Practices Act, Section 501, Part II, Florida Statutes;
- (d) Whether Defendant Pacific Webworks's conduct described herein constitutes a breach of contract; and
- (e) Whether the Defendants' conduct described herein results in unjust enrichment to Defendants.

COUNT I
Fraud in the Inducement
(On Behalf of Plaintiff and the Class)

50. Plaintiff incorporates by reference the foregoing allegations.

51. As described with particularity in paragraphs 7 through 42, and throughout all Counts of this Complaint, Defendants have disseminated, and continue to disseminate advertising and transaction pages that they know or should reasonably know is false and misleading. This conduct includes, but it is not limited to, promoting and advertising "work-at-home" products without disclosing the actual price, a material term of any transaction. Defendants actively misrepresent and conceal the actual price(s) consumers are charged when they submit their credit card information.

52. Through a series of advertisements, representations and false statements regarding the efficacy, association, and price of work-at-home products, Defendants acted in concert to

misrepresent the actual price a consumer would be charged. John Doe Defendant facilitated the widespread distribution of work-at-home offers by optimizing, directing and recruiting third party publishers to promote specific Pacific WebWorks landing pages that included deceptive terms. John Doe Defendant had knowledge of the deceptive nature of these work-at-home offers and still sought to actively drive consumers to them for its own monetary gain.

53. Pacific WebWorks, in conjunction with John Doe Defendant, took concrete and intentional steps to conceal the actual price ultimately placed on the credit cards of members of the Class and SubClass. Pacific WebWorks intentionally made all representations of the actual price difficult to locate and/or read, by hiding these representations on a separate page. or displaying these representations far from the payment fields in a miniscule font and in an indistinct color.

54. John Doe Defendant took concrete and intentional steps to conceal the actual price ultimately placed on the credit cards of members of the SubClass. John Doe Defendant intentionally made all representations of the actual price difficult to locate and/or read. by hiding the price representations in its advertising material on a separate page. or omitting it in its entirety. Further, John Doe Defendant and its affiliate marketers assisted in the design of Pacific WebWorks landing pages so as to display the price representations far from the payment fields in a miniscule font and in an indistinct color.

55. Pacific WebWorks and John Doe Defendant actively took part in optimizing the work-at-home transaction pages so as to increase the rate of conversions (sales) and have full knowledge and visibility of the website content and each transaction, including knowledge of the concealed prices. For example, John Doe Defendant pays its affiliate marketers and publishers an amount far exceeding the *de minimis* product price advertised to consumers (e.g., an ad

network will offer an affiliate/publisher who drives traffic to a particular transaction page "\$32.00 / Sale." The same page, posted for use by its stable of affiliates by John Doe Defendant, will state, "Cost to Consumer: \$1.95"). Thus, all Defendants clearly understand that the offer pages they create and post for publishers do not contain a clear and conspicuous disclosure of the actual price a consumer will be charged or, put differently, all know that a consumer will be charged a sum beyond \$1.95.

56. Defendants intentionally misrepresented the association their work-at-home products have with various media outlets by making representations that the products stem from these media outlets and have been endorsed by television networks. John Doe Defendant knew that Pacific WebWorks and their its own affiliate publishers were actively misusing the media outlets' names and other trademarks to deceive consumers.

57. In furtherance of their fraudulent conduct, Defendants advertised and promoted their work-at-home products by using the word "free" and other variations of "free" where the actual charges, and/or any conditions placed on the offer were not clearly and conspicuously disclosed to the consumer at the time the offer was made. John Doe Defendant knew that Pacific WebWorks was actively misusing the word "free" to deceive consumers.

58. Defendants additionally promoted their products through a network of publishers operating fake news articles and fake blogs. These promotions and marketing materials feature widespread use of the term "free" to describe Defendants' product. John Doe Defendant knew that their affiliate publishers were actively misusing the word "free" to deceive consumers.

59. By committing the acts alleged in this Complaint, Defendants have knowingly disseminated untrue and/or misleading statements through fraudulent advertising in order to sell or induce members of the public to purchase work-at-home products.

60. The price of a consumer product is a material term of any transaction because it directly affects a consumer's choice of, or conduct regarding, whether to purchase a product. Any deception or fraud related to the price of a consumer product is materially misleading.

61. The misrepresentation of the price of a product is likely to mislead a reasonable consumer who is acting reasonably under the circumstances.

62. Defendants knew or should have known of the falsity of the representations made regarding the work-at-home products they marketed.

63. Defendants intended that the deceptive and fraudulent representations would induce a consumer to rely and act based on those false representations.

64. Plaintiff and members of the Class and Subclass were all charged monies beyond what they authorized. Accordingly, Plaintiff and members of the Class have suffered injury in fact and lost money in justifiable reliance on Defendants' misrepresentations of material fact.

65. In deceiving Plaintiff and the Class by creating and supporting advertising that fails to clearly and conspicuously disclose the actual price of its products, and inducing Plaintiff and the Class to proffer payment information based on that misrepresentation, all Defendants have engaged in fraudulent practices designed to mislead and deceive consumers.

66. Plaintiff and the Class have suffered harm as a proximate result of the violations of law and wrongful conduct of the Defendants.

67. In deceiving Plaintiff and the SubClass by creating and supporting advertising that fails to clearly and conspicuously disclose the actual price of its products, and inducing

Plaintiff and the Subclass to proffer payment information based on that misrepresentation, John Doe Defendant has engaged in fraudulent practices designed to mislead and deceive consumers.

68. Plaintiff and the Subclass have suffered harm as a proximate result of the violations of law and wrongful conduct of John Doe Defendant.

69. Plaintiff, on his own behalf, and on behalf of the Class and Subclass, seeks damages for Defendants' unlawful conduct.

COUNT II

Conspiracy to Commit Fraud in the Inducement (On Behalf of Plaintiff and the SubClass)

70. Plaintiff incorporates by reference the foregoing allegations.

71. Defendants acted in concert as business partners and through a common enterprise to drive sales of work-at-home products, and cram consumers credit card bills with unauthorized charges through fraudulent and deceptive marketing, as stated in Count I of this Complaint.

72. As a fundamental part of their business relationship, Defendants acted to deceive consumers regarding the actual price of the work-at-home products, thereby inducing consumers to submit their credit card information, on which Pacific WebWorks crammed unauthorized charges. Perpetrating the fraudulent activity described herein requires multiple identical representations from Defendants, each one reinforcing the legitimacy of the deceptive offer; therefore, it is imperative for Pacific WebWorks and John Doe Defendant to work cooperatively and with knowledge of each other's marketing methods. John Doe Defendant plays the central role in creating a consistent appearance by ensuring that Pacific WebWorks transaction pages and their affiliate publishers' sponsored links, fake news articles and blogs all convey the same deceptive marketing message.

73. Defendants took overt acts in furtherance of their conspiracy across the nation, and specifically took overt acts in furtherance within Florida. As described with particularity above, Defendants formed contracts with each other, created deceptive marketing, advertisements, websites, and other solicitation materials to drive consumers to the work-at-home transaction page with knowledge that the marketing contained therein was false and misleading, and with the intent that the marketing taken as a whole would be relied on by consumers. Defendants further partnered with affiliate marketers and publishers to increase the effectiveness of their deceptive and fraudulent marketing. Defendants, working together, and working with non-defendant affiliate marketers and publishers, formed a mutually beneficial network of deceptive and misleading marketing designed to induce consumers to submit a credit card number for the purchase of a work-at-home product.

74. Any single Defendant, acting alone, would be unable to accomplish the level of deception and misrepresentations accomplished by Defendants acting together. The combination of their joint deception, embodied in the "creative" benefits derived from this combination, reinforces the appearance of legitimacy presented to consumers, thereby increasing the likelihood that a consumer will submit their credit card number. Pacific WebWorks would not have the widespread reach to consumers across a wide variety of websites and would be unable to enroll customers with the same effectiveness without the direct involvement, assistance, and direction of John Doe Defendant.

75. Plaintiff and the SubClass have suffered harm in the form of monetary damages as a proximate result of the conspiracy and violations of law carried out by Defendants.

76. Plaintiff, on his own behalf, and on behalf of the SubClass, seeks damages for Defendants' unlawful conduct.

Count III
Violation of the Florida Deceptive and Unfair Trade Practices Act
Section 501, Part II, Florida Statutes
(On Behalf of Plaintiff and the Class)

77. Plaintiff incorporates by reference the foregoing allegations.

78. Section 501, Part II, Florida Statutes provides:

501.202 Purposes; rules of construction.--The provisions of this part shall be construed liberally to promote the following policies:

(1) To simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.

(2) To protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

(3) To make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

79. Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") (Fla. Stat. 501.201, *et seq.*) protects both consumers and competitors by promoting fair competition in consumer and commercial markets for goods and services.

80. FDUTPA prohibits any unlawful, unfair or fraudulent business acts or practices including the employment of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact.

81. As described within, Defendants' continued utilization of unlawful and unconscionable marketing practices, and their continued practice of charging consumers' credit cards without authorization, constitutes an unlawful business practice in violation of Fla.Stat. 501.201, *et seq.*

82. In deceiving Plaintiff and the Class by creating and supporting advertising that fails to clearly and conspicuously disclose the actual price of Defendants' products, and inducing

Plaintiff and the Class to proffer payment information based on that misrepresentation, Defendants have engaged in deceptive trade practices in violation of Fla. Stat. 501.201, *et seq.*

83. The price of a consumer product is a material term of any transaction because it is likely to affect a consumer's choice of, or conduct regarding, whether to purchase a product. Any deception related to the price of a consumer product is materially misleading.

84. The misrepresentation of the price of Pacific WebWorks' products is likely to mislead a reasonable consumer who is acting reasonably under the circumstances.

85. Pacific Webworks and the John Doe Defendant have violated the "unfair" prong of the FDUTPA in that, by failing to disclose the actual price charged to a consumer and actively deceiving and inducing a customer to purchase a product, their actions caused substantial injury to consumers. The injury caused by Defendants' conduct is not outweighed by any countervailing benefits to consumers or competition, and the injury is one that consumers themselves could not reasonably have avoided.

86. The act and practice of all Defendants are injurious to the public interest because Defendants have injured numerous people beyond just Plaintiff and the Class. Defendants have the ongoing capacity to injure members of the public through the conduct alleged in this Complaint.

87. Defendants violated the "fraudulent" prong of the FDUTPA in that their statements, advertisements, and representations regarding what amount consumers would be charged for Defendants' products are false and likely to deceive a reasonable consumer.

88. Defendants intended that Plaintiff and the Class rely on their material misrepresentations and deception in that Plaintiff's and the Class's reliance induced them to submit a credit card number that could thereafter be charged without authorization.

89. Defendants' deception occurred during the marketing and sale of a work-at-home product and, therefore, occurred in the course of trade and commerce.

90. Plaintiff and the Class have suffered harm as a proximate result of the violations of law and wrongful conduct of Defendants in the form of actual monetary damages.

91. Plaintiff seeks an order requiring Pacific Webworks to: (1) immediately stop the unlawful practices stated in this Complaint; (2) make full restitution of all funds wrongfully obtained; (3) pay actual damages; and (4) pay interest, attorney's fees, and costs pursuant to Fla.Stat. 501.201, *et seq.*

COUNT IV
Breach of Contract
(On Behalf of Plaintiff and the Pacific WebWorks Class)

92. Plaintiff incorporates by reference the foregoing allegations.

93. In reliance upon Defendants' misrepresentations and deceptive advertising, Plaintiff entered into a contract to receive a product from Pacific Webworks at a genuinely discounted price, or for the cost of shipping and handling only. Because of these deceptive misrepresentations, Plaintiff and the Class entered their credit card information with the understanding that they would only be charged a genuinely discounted price or the cost of shipping and handling in exchange for a product from Pacific Webworks.

94. By cramming additional undisclosed charges on the credit/debit cards of Plaintiff and the members of the Class, Pacific WebWorks breached the contract for the purchase of a product at the clearly disclosed price described above. Plaintiff and the members of the Class did not assent to any additional charges and did not reasonably expect that the contract for purchase and sale would include such additional charges.

95. At all times relevant to this action, Pacific Webworks acted willfully and with the intent to breach the contracts they entered into with Plaintiff and the Class.

96. Plaintiff and the Class have suffered damages as a direct result of Pacific Webworks's acts and practices in the form of monies paid and lost.

97. Plaintiff, on his own behalf, and on behalf of the Class, seeks damages for Defendant's breach of contract, as well as interest and attorney's fees and costs.

COUNT V

**Restitution/Unjust Enrichment (*in the alternative to Breach of Contract*)
(On Behalf of Plaintiff and the Pacific WebWorks Class)**

98. Plaintiff incorporates by reference the foregoing allegations.

99. Plaintiff and members of the Class conferred a monetary benefit on Pacific WebWorks. Defendant has received and retained money belonging to Plaintiff and the Class resulting from substantial and unauthorized charges placed on their credit card bills by Pacific WebWorks. Defendant profits from each individual purchase made by a consumer after being directed to Pacific WebWorks's transaction pages.

100. Defendant appreciates or has knowledge of such benefit.

101. Under principles of equity and good conscience, Defendant should not be permitted to retain the money belonging to Plaintiff and members of the Class, which Defendant has unjustly received as a result of its unlawful actions.

102. Plaintiff and other members of the Class suffered damages as a direct result of Defendant's conduct.

103. Plaintiff, on his own behalf, and on behalf of the Class, seeks restitution for Defendant's unlawful conduct, as well as interest and attorney's fees and costs.

COUNT VI

**Restitution/Unjust Enrichment
(On Behalf of the Plaintiff and the SubClass)**

104. Plaintiff incorporates by reference the foregoing allegations.

105. Plaintiff and members of the SubClass conferred a monetary benefit on John Doe Defendant. Defendant has received and retained money belonging to Plaintiff and the SubClass resulting from substantial and unauthorized charges placed on their credit card bills by Pacific WebWorks. John Doe Defendant profits from each individual purchase after they direct a consumer to a Pacific WebWorks transaction page.

106. John Doe Defendant appreciates or has knowledge of such benefit.

107. Under principles of equity and good conscience, Defendants should not be permitted to retain the money belonging to Plaintiff and members of the SubClass, which Defendants have unjustly received as a result of its unlawful actions.

108. Plaintiff and other members of the SubClass suffered damages as a direct result of Defendants' conduct.

109. Plaintiff, on his own behalf, and on behalf of the SubClass, seeks damages for Defendants' unlawful conduct, as well as interest and attorney's fees and costs.

WHEREFORE, Plaintiff Randy Guffey, on behalf of himself and members of the Class and SubClass, prays for the following relief:

a. Certify this case as a class action on behalf of the Class as defined above and appoint Randy Guffey as class representative, and undersigned counsel as lead counsel of this class action;

b. Enter judgment against Pacific Webworks and John Doe Defendant for all monetary, actual, consequential, and compensatory damages caused by their unlawful conduct;

c. Award Plaintiff and the Class civil penalties and/or punitive damages for violations of the above-cited statutes and law.

d. Award Plaintiff and the Class reasonable costs and attorneys' fees;

- e. Award Plaintiff and the Class pre- and post-judgment interest;
- f. Enter judgment for injunctive, statutory and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and,
- g. Award such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiffs request trial by jury of all claims that can be so tried.

Dated: July 8, 2010

EDELSON MCGUIRE, LLC

By:  (940410) fr
Will Haselden

One of the Attorneys for RANDY
GUFFEY, individually and on behalf of a
class of similarly situated individuals

Will Haselden (Fla. Bar No. 0072011)
Christopher L. Dore (*pro hac vice* motion to be filed)
EDELSON MCGUIRE, LLC
350 North LaSalle, Suite 1300
Chicago, Illinois 60654
Telephone: (312) 589-6370
whaselden@edelson.com
cdore@edelson.com

David P. Healy (Fla. Bar No. 0940410)
2846-B Remington Green Cir.
Tallahassee, FL 32308
(850) 222-5400
(850) 222-7339 (fax)
dhealy@davidhealylaw.com