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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MARION

6 STATE OF OREGON,

7 Plaintiff,

8 v.

9 TRILEGIANT CORPORATION and TRL
10 GROUP, INC.

11 Defendants.

Case No. **06C21808**

STIPULATED GENERAL JUDGMENT AND
PERMANENT INJUNCTION

12
13 Plaintiff, the State of Oregon (the "State," "Oregon" or "Plaintiff"), and defendants
14 Trilegiant Corporation and TRL Group (collectively "Trilegiant" or "Defendants"), pursuant to
15 ORCP 67 F, stipulate to the entry of this General Judgment and Permanent Injunction (hereafter
16 "Judgment") by the Court.

17 The parties consent to the entry of this Judgment for the purposes of settlement only,
18 without this Judgment constituting evidence against or any admission by any party, and without
19 trial of any issue of fact or law, and without this Judgment constituting any admission of liability
20 or wrongdoing by Defendants or any other party, and with the understanding that Defendants'
21 position is that they have at all times been in compliance with all applicable laws, and with the
22 understanding that by entering into this Agreement, Defendants do not agree or concede that the
23 claims or allegations asserted by the State have merit.

24 The parties acknowledge that, in addition to this judgment, Trilegiant has entered into
25 settlement agreements with the states of California, Connecticut, Iowa, Illinois, Pennsylvania,
26 Tennessee, Vermont, New Jersey, Maine, Missouri, Washington, Alaska, North Carolina, Ohio,
and Michigan in the form of judgments and assurances of voluntary compliance or

1 discontinuance resolving claims with respect to Check and Non-Check Solicitations. Oregon
2 and the other states are referred to collectively, hereafter, as the "Settling States." This judgment,
3 and the other aforementioned settlement agreements, are referred to collectively hereafter as the
4 "Settlement Documents."

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment may be
6 entered in this matter as follows:

7 **I. JURISDICTION**

- 8 1. The Court has jurisdiction over the subject matter of this action and of the parties.
9 2. Venue is proper in this Court.
10 3. The complaint states a cause of action against Defendants under the Unfair Trade
11 Practices Act, ORS 646 *et seq.* (hereinafter "UTPA").

12 **II. DEFINITIONS**

13 4. Unless otherwise specified, the following definitions shall apply:

14 A. "**Account**" means a credit card account, debit card account, checking
15 account, savings account, loan account, mortgage account or other similar account.

16 B. "**Authorized User**" means the holder of an Account or a person
17 authorized to make charges to an Account.

18 C. "**Automatic Renewal**" means a plan or arrangement under which a
19 Membership Program is automatically renewed at the end of the initial membership term,
20 and thereafter renewed continually for successive membership terms, unless the
21 consumer affirmatively cancels the membership. A "membership term" does not include
22 any portion of a trial period included in a "Trial Offer."

23 D. "**Check Solicitation**" means any offer, sent by Mail, of a live check, the
24 cashing or depositing of which obligates a consumer to purchase or renew a membership
25 in a Membership Program, either immediately or upon the expiration of a Trial Offer,
26 unless the consumer affirmatively cancels the membership.

1 E. **“Clear and Conspicuous”** or **“Clearly and Conspicuously”** means a
2 statement that, regardless of the medium in which it is made, is readily understandable
3 and presented in such size, color, contrast, duration, and location, compared to the other
4 information with which it is presented, that it is readily apparent to the person to whom it
5 is disclosed. A statement may not contradict or be inconsistent with any other information
6 with which it is presented. If a statement is necessary to prevent other information from
7 being misleading or deceptive, then the statement must be presented in proximity to that
8 other information, in a manner that is readily noticeable, readable, and understandable,
9 and it must not be obscured in any manner.

10 F. **“Effective Date”** means the date on which all of the Settling States,
11 through the Office of the California Attorney General, have delivered to Trilegiant the
12 signatures or court orders necessary for its Settlement Documents to be effective.

13 G. **“Express Consent”** means an Authorized User’s unambiguous express
14 and affirmative written consent to charge a Membership Charge to an Account, either
15 immediately or upon the expiration of a Trial Offer, unless the Authorized User
16 affirmatively cancels his or her membership.

17 H. **“Fulfillment Materials”** means materials such as brochures, pamphlets,
18 and the like that include the terms and conditions of a Membership Program, sent by any
19 Defendant to a consumer after he or she has given Express Consent to purchase a
20 membership in a Membership Program.

21 I. **“Mail”** means to send by United States mail or other physical delivery
22 method such as courier, UPS or Federal Express, but excluding electronic mail.

23 J. **“Membership Charge”** means any amount charged to an Account of an
24 Authorized User for an initial or renewal membership in a Membership Program.

25 K. **“Membership Program”** means any program offered by Trilegiant to a
26 consumer in a Settling State offering benefits, goods or services to members of the
program, and for which Trilegiant charges a fee or requires that the consumer provide

1 Trilegiant with some other form of consideration. This excludes one-time sales
2 transactions unless they involve Automatic Renewals or require consumers to
3 affirmatively cancel their membership in order to avoid continuing or additional charges
4 or other financial obligations.

5 L. **“Non-Check Solicitation”** means any offer, sent by Mail, of a benefit or
6 of other valuable consideration, which is promoted as “free” and is an amount credited to
7 an Account or is cash, a gift card, a savings bond, or a voucher that can be exchanged for
8 a credit to an Account, a gift card or any cash equivalency, which by applying for or
9 accepting the offered benefit or consideration, a consumer becomes obligated to purchase
10 or renew a membership in a Membership Program, either immediately or upon the
11 expiration of a Trial Offer, unless he or she affirmatively cancels his or her membership.

12 M. **“Partner”** means any entity with whom Trilegiant contracts for purposes
13 of marketing Membership Programs to customers of that entity.

14 N. **“Trial Offer”** means an offer to a consumer of a membership in a
15 Membership Program for a trial or risk-free period, during which the consumer has the
16 benefits of membership and, before the end of the trial or risk free period, can cancel the
17 membership without incurring a Membership Charge.

18 III. INJUNCTION

19 5. Pursuant to ORS 646.632, Defendants, and their successors, assigns and
20 subsidiaries, directly or through any of their officers, agents, directors, servants, employees, or
21 salespersons who are acting on behalf of Defendants or their subsidiaries, are hereby
22 permanently enjoined and restrained from engaging in the following conduct with respect to
23 Membership Programs offered through Check and Non-Check Solicitations:

24 A. Failing to disclose Clearly and Conspicuously the following information
25 in Check and Non-Check Solicitations:
26

1 (1) *For Check Solicitations*, the following statement or substantially
2 similar words that have the same substantive meaning and do not materially
3 change any of the terms of the disclosure:

4 “Cashing the enclosed check will result in a charge of \$
5 [then current [monthly or annual, as applicable] fee] to your
6 [name of Account] for a membership in [Membership
7 Program] unless you cancel within the Trial Offer period.
8 To cancel, you must call [toll-free number] within [length
9 of Trial Offer period] of the date you receive your
10 Membership Fulfillment Materials. We will not have to
11 ask for [if applicable: your [name of Account] Account
12 number or] your further consent in order to charge you.
13 [Membership Program] is not affiliated with [Partner]. At
14 the end of each [membership term], [Membership Program]
15 will charge your [name of Account] Account the
16 membership fee in effect at that time unless you call to
17 cancel.”

18 (2) *For Non-Check Solicitations*, the following statement or
19 substantially similar words that have the same substantive meaning and do not
20 materially change any of the terms of the disclosure:

21 “Accepting the enclosed offer will result in a charge of \$
22 [then current [monthly or annual, as applicable] fee] to your
23 [name of Account] for a membership in [Membership
24 Program] unless you cancel within the Trial Offer period.
25 To cancel, you must call [toll-free number] within [length
26 of Trial Offer period] of the date you receive your
Membership Fulfillment Materials. We will not have to

1 ask for [if applicable: your [name of Account] Account
2 number or] your further consent in order to charge you.
3 [Membership Program] is not affiliated with [Partner]. At
4 the end of each [membership term], [Membership Program]
5 will charge your [name of Account] Account the
6 membership fee in effect at that time unless you call to
7 cancel.”

8 (3) The disclosures required by subparagraphs (1) and (2) must be
9 made in the Check or Non-Check Solicitation in any one or more of the following
10 ways:

11 (a) in the first paragraph of the main body;

12 (b) in the first page of the main body in type which is bold in
13 comparison to the majority of other text on the page;

14 (c) in the main body, so long as Trilegiant includes a Clear and
15 Conspicuous notice at the bottom of the first page of the main body stating
16 the following, or substantially similar words that have the same
17 substantive meaning and do not materially change the terms of the
18 disclosure: “Important Notice: Your [name of Account] Account will
19 automatically be charged for the membership fee if you accept this offer
20 and fail to cancel within the Trial Offer period. See [as applicable: below,
21 over, next page, page ___] for details;” or

22 (d) in the main body, so long as Trilegiant includes on the first
23 page of the main body Clear and Conspicuous information regarding the
24 Membership Program, including (i) the price; (ii) that the consumer will
25 be charged if he or she does not cancel within the Trial Offer period; (iii)
26 the terms of the Automatic Renewal feature; and (iv) a statement that the
Membership Program is not affiliated with the Partner. Items (i) through

1 (iii) shall be disclosed in close proximity to one another, and Defendants
2 shall not use any form of any of the words specified in paragraph 6 when
3 providing this information.

4 (4) Check and Non-Check Solicitations shall also include Clear and
5 Conspicuous statements that:

6 (a) The consumer should keep this notice for his or her
7 records; and

8 (b) The consumer should expect in the Mail, within four to five
9 weeks of providing Express Consent, Fulfillment Materials regarding the
10 consumer's membership in the Membership Program.

11 B. If any Check or Non-Check Solicitation includes the use of a Trial Offer,
12 failing to disclose Clearly and Conspicuously in the Check or Non-Check Solicitation a
13 statement that the Trial Offer shall commence as of the date the consumer receives the
14 Fulfillment Materials. The date of receipt shall be deemed to be five days after the
15 Fulfillment Materials are sent by first class Mail. If the Fulfillment Materials are sent by
16 second or third class Mail, receipt shall be deemed to be nine days after such mailing.
17 Cancellations shall be honored for a period of fifteen (15) days after the end of the Trial
18 Offer period.

19 C. For Check Solicitations,

20 (1) Failing to disclose Clearly and Conspicuously on the face of a
21 check offered with a Check Solicitation a statement that notifies the consumer that
22 by depositing or cashing the check, the consumer is purchasing a membership in
23 the specific Membership Program.

24 (2) Including on the face of a check offered with a Check Solicitation
25 any description of an accompanying Trial Offer as "free," "complimentary," or
26 "risk-free," or similar terms or any reference to "Cash Disbursements Office" or
similar terms.

1 (3) Including any writing above the endorsement line on the back of
2 any check offered with a Check Solicitation other than (i) a writing that is
3 required by law; (ii) a copyright notice or other writing, but only if that writing is
4 necessary to protect or identify a Partner's intellectual property rights; (iii) a
5 writing that the Partner believes in good faith to be required by law or necessary
6 to avoid potential liability; and (iv) the disclosure required by subparagraph (4)
7 below.

8 (4) Failing to include Clearly and Conspicuously above the
9 endorsement line on the back of any check offered with a Check Solicitation the
10 following disclosure, or substantially similar words that have the same substantive
11 meaning and do not materially change the terms of the disclosure:

12 "By cashing this check I agree to a Trial Offer in
13 [Membership Program] and understand that \$ [then current
14 [monthly or annual, as applicable] fee] will automatically
15 be charged to my [name of Account] Account unless I
16 cancel my membership by calling [toll-free number] before
17 the end of the Trial Offer period. I understand that I will
18 also be charged every [membership period] at the then
19 current fee and must cancel to avoid future fees and receive
20 any applicable refund."

21 D. Making any false or misleading representation, expressly or by
22 implication, that the Check Solicitation or other benefit offered through a Non-Check
23 Solicitation:

24 (1) is a refund, rebate, reward or other benefit conferred because of a
25 business relationship between [PARTNER] and the consumer; or

26 (2) is anything other than a benefit or incentive offered by Defendants
for the purchase of a membership in a Membership Program.

1 However, the use of name(s) or logo(s) of a third party shall not, in and of itself,
2 be deemed to make such a representation, and Defendants shall not be prohibited from
3 describing any rebate program that is included as part of the Membership Program.

4 E. Making any false or misleading representation, expressly or by
5 implication, that the Membership Program, any check or benefit offered through a Check
6 Solicitation, or any benefit offered through a Non-Check Solicitation is a program,
7 service or benefit offered by any entity other than Trilegiant; provided, however, that the
8 use of names or logos of a third party shall not, in and of itself, be deemed to make such a
9 representation.

10 F. Failing to send by Mail or other delivery mechanism, that is reasonably
11 designed to reach the consumer within four weeks of obtaining his or her Express
12 Consent, Fulfillment Materials that Clearly and Conspicuously disclose:

13 (1) on the first page of the welcome letter accompanying the
14 Fulfillment Materials:

15 (a) a statement in bold face or underlined type, or otherwise
16 displayed more prominently than the surrounding text, informing the
17 Authorized User that he or she has purchased a membership in
18 [Membership Program name] and that he or she has [number of days in
19 the Trial Period] from the date of the receipt of this welcome letter to
20 cancel the membership in order to avoid being charged for the
21 membership;

22 (b) the consumer's membership number in the Membership
23 Program;

24 (c) the length of the Membership Period;

25 (d) the amount and frequency of the Membership Charge;

26 (e) that the Membership Charge has been or will automatically

be billed to the Authorized User's account, and, if subject to Automatic

1 Renewal, that the Authorized User's Membership will be renewed and the
2 Membership Charge will be automatically billed to the Authorized User's
3 Account for each successive period unless the Authorized User cancels the
4 membership;

5 (f) an explanation of the cancellation procedures, including a
6 toll-free telephone number which may be used for that purpose; and

7 (g) a statement that the consumer should keep these Fulfillment
8 Materials for his or her records.

9 (2) on the outside of the envelope containing the Fulfillment Materials,
10 a statement in no less than 14 point, bold type indicating "Materials For
11 Membership You Ordered" or substantially similar words that have the same
12 substantive meaning and do not materially change the terms of the disclosure.

13 G. For renewal notices,

14 (1) Failing to send Automatic Renewal notices to consumers, by Mail
15 or other delivery mechanism that includes address forwarding, as follows:

16 (a) for each of the consumer's memberships that are billed less
17 frequently than quarterly a renewal notice between thirty (30) and sixty
18 (60) days prior to each renewal billing date; and

19 (b) for each of the consumer's memberships, regardless of the
20 frequency Defendants bill Membership Charges, a renewal notice between
21 thirty (30) and sixty (60) days prior to the effective date of either any
22 increase in the Membership Charge for the Membership Program or any
23 change in the frequency of assessing the Membership Charge for the
24 Membership Program, such as a change from annual to monthly billing.

25 Renewal notices sent pursuant to this subparagraph shall include all
26 information required by paragraph 5(G)(2), below, as well as an

1 explanation of the increase in the Membership Charge or change in the
2 billing frequency.

3 (2) Failing to include Clearly and Conspicuously in all renewal notices
4 sent pursuant to subparagraphs (G)(1)(a) and (b), above, the following:

5 (a) The terms of the cancellation policy for the Membership
6 Program and a toll-free telephone number which a consumer may call to
7 cancel his or her membership; and either

8 (b) For consumers billed less frequently than quarterly, notice
9 of the length of the renewal period, the amount of the Membership
10 Charge; that the consumer is about to be renewed and charged for the next
11 Membership Program term unless he or she or cancels; and the deadline
12 by which a consumer must cancel in order to avoid being billed for the
13 Membership Charge; or

14 (c) For consumers billed quarterly or more frequently, a
15 reminder of the amount of the Membership Charge and the frequency that
16 Defendants bill or charge the Membership Charge;

17 (3) For consumers who as of sixty days after the Effective Date have
18 one or more memberships in a Membership Program which are billed quarterly or
19 more frequently, failing to send by Mail or other delivery mechanism that
20 includes address forwarding, a notice specifying: the terms of the cancellation
21 policy for the Membership Program; a toll-free telephone number which a
22 consumer may call to cancel his or her membership; and a reminder of the amount
23 of the Membership Charge and the frequency that Defendants bill or charge the
24 Membership Charge. Notices provided pursuant to this subparagraph shall be
25 sent no later than 120 days after the Effective Date.

26 (4) Failing to include on the outside of an envelope, the front of a
postcard, or on the exterior of the applicable mailing piece containing an

1 Automatic Renewal notice or the notice required by subparagraph 5(G)(3), above,
2 a statement in no less than 14-point, bold type indicating “Membership Renewal
3 Notice” or substantially similar words that have the same substantive meaning
4 and do not materially change any of the terms of the disclosure.

5 (5) Failing to include the consumer's membership number in the
6 Membership Program in any renewal notices sent pursuant to subparagraph 5(G).

7 H. Failing:

8 (1) prior to billing an Account for a Membership Charge, to first
9 obtain the Express Consent of the Authorized User and then maintain the original,
10 a copy, or an electronic copy of the Express Consent of the Authorized User in a
11 manner that ensures access to such record reasonably promptly for at least 24
12 months from the date Trilegiant obtains such Express Consent and, upon written
13 request, make such record available to the State;

14 (2) to the extent practical under the billing practices of any applicable
15 billing entity [e.g., a credit card company], to disclose the name of the
16 Membership Program, the membership number and a clearly identifiable toll-free
17 telephone number for customer service on each billing statement or invoice;

18 (3) to the extent permitted under the billing practices of any applicable
19 Partner, if the Membership Charge is billed to a mortgage account or other loan
20 account, to disclose Clearly and Conspicuously, on the billing statement or
21 invoice that the charge is not related to the mortgage or loan charges;

22 (4) to the extent permitted by the billing practices of any applicable
23 Partner, to cease using the term “Optional Product” to describe Membership
24 Charges on mortgage or billing statements without Clearly and Conspicuously
25 disclosing on the first page of the billing statement or invoice that the Optional
26 Product is a Membership Program purchased by the consumer and without

1 providing a toll-free telephone number the consumer may call to cancel the
2 Membership Charge or receive a refund; and

3 (5) to cease including Check Solicitations and Non-Check
4 Solicitations with a consumer's mortgage or other billing statement that are not
5 Clearly and Conspicuously differentiated from the billing statement, provided that
6 the fact that a Check or Non-Check Solicitation is included in the same envelope
7 as a mortgage or other billing statement shall not by itself be deemed to be a
8 violation of this provision.

9 I. For Cancellations and Refunds,

10 (1) Failing to have a cancellation policy by which Authorized Users
11 may cancel any membership in any Membership Program by providing his or her
12 membership number, or first and last name and billing address, either orally or in
13 writing;

14 (2) Failing to disclose Clearly and Conspicuously in Check and Non-
15 Check Solicitations and Fulfillment Materials the terms and conditions of
16 Defendants' cancellation policy;

17 (3) Failing to cancel a consumer's membership in a Membership
18 Program within ten (10) business days of receiving a cancellation request,
19 including failing to cease assessing any renewal fees after the consumer cancels
20 his or her membership in a Membership Program for any period after the effective
21 date of cancellation, or refunding any renewal charges that have already been
22 processed for a term that has not yet commenced, provided the consumer has
23 provided his or her membership number, or first and last name and billing
24 address;

25 (4) Failing to process any applicable refund or account credit provided
26 for under the terms of the Membership Program cancellation policy for a
membership cancelled by the consumer within ten (10) business days of receiving

1 the cancellation request, including failing to credit to the consumer any renewal
2 charges that have already been processed for a term that has not yet commenced,
3 provided that the consumer has provided his or her membership number, or first
4 and last name and billing address.

5 (5) Failing to notify each Authorized User who calls any Defendant to
6 dispute a Membership Charge and in any way indicates that he or she did not
7 consent to, authorize, or understand that he or she would be assessed a
8 Membership Charge, of Defendants' cancellation policy, and, if the consumer
9 elects to cancel the membership in the Membership Program, to honor the
10 cancellation and provide any credit or refund that is provided for under the
11 cancellation policy for that Membership Program, provided that the consumer
12 provides his or her membership number or first and last name and billing address.

13 (6) Failing, without requiring additional action by any consumer (other
14 than requesting that the consumer provide information necessary to process the
15 cancellation), to promptly credit or refund in accordance with the cancellation
16 policy the amount (or portion thereof) of any unauthorized Membership Charge,
17 less any credit or refund such person may have already received related to such an
18 unauthorized Membership Charge.

19 (7) Failing to maintain a record of requests for cancellation of
20 memberships in all Membership Programs, whether received during a Trial Offer
21 period or during a full membership period, in a manner that ensures reasonable
22 access to such records for at least 24 months following such requests, and upon
23 written request, make such records available to the Attorney General. The records
24 shall be in the form of originals, copies or electronic copies of Trilegiant's internal
25 records of such cancellations.
26

1 J. Making any representation in any solicitation or notice to consumers,
2 directly or by implication, that is contrary to any of the statements and disclosures
3 required by this Judgment.

4 6. Provisions of this Judgment which specifically permit Defendants to make
5 required disclosures in “substantially similar words that have the same substantive meaning and
6 do not materially change any of the terms of the disclosure” shall not be construed to permit use
7 of any form of the following words in a disclosure: activate; enroll; initiate; join; or register.

8 7. Trilegiant shall not enter into, continue, or renew any contract with any Partner
9 for the purpose of marketing Membership Programs that does not comply with all of the
10 injunctive provisions of Paragraph 5 above. In connection with the preparation or performance
11 of such contracts, Trilegiant shall not require or commit any act that is inconsistent with the
12 provisions of Paragraphs 5 or 6, except as noted in paragraphs 5.H.(2), 5.H.(3) and 5.H.(4).

13 IV. CONSUMER RESTITUTION

14 8. Trilegiant shall pay Eight Million, Three Hundred Twenty-Five Thousand Dollars
15 (\$8,325,000) (“Settling States Fund”) in restitution to consumers in the Settling States as
16 follows:

17 A. Within one hundred eighty (180) days from the Effective Date, Trilegiant
18 shall provide the sum of Six Million Dollars (\$6,000,000) (“Fund 1”) to make full
19 restitution to all “Fund 1 Eligible Consumers” in the Settling States, including Oregon. A
20 Fund 1 Eligible Consumer is a consumer who purchased one or more memberships in a
21 Membership Program between July 1, 2001 and the Effective Date, and has complained
22 by no later than the Effective Date that he or she did not consent to, authorize, or
23 understand that he or she would be assessed a Membership Charge or would be assessed
24 any charge in connection with an Automatic Renewal, provided that the consumer: (1)
25 purchased the membership in the Membership Program through a Check or Non-Check
26 Solicitation; (2) has not used the benefits of the Membership Program for which he or she
purchased a membership; and (3) resided in one of the Settling States at the time he or

1 she submitted the complaint. To be eligible for restitution, the consumer must have
2 either:

3 (1) sent his or her complaint to Defendants by Mail or by e-mail
4 received by Defendants and submitted through the "General Inquiries" or
5 "Comments Form" sections of the <http://www.trilegiant.com/> internet web site (or
6 any internet sites or addresses which may replace or supersede either of those
7 sections or, if applicable, that web site) on or before the Effective Date; or

8 (2) sent his or her written complaint in any format to Plaintiff, one of
9 the other Settling States, or one of Defendants' Partners by the Effective Date and
10 the complaint must have been forwarded by the entity that received it to
11 Defendants by no later than 60 days after the Effective Date.

12 Full restitution paid pursuant to this subparagraph shall consist of all membership fees
13 paid by the Fund 1 Eligible Consumer after July 1, 2001, less any refunds previously paid
14 or provided by Defendants. Any amount of Fund 1 not distributed pursuant to this
15 subparagraph shall be added to the sum available for distribution pursuant to
16 subparagraph 8(B), below.

17 B. Except as provided in this subparagraph, within one year after the
18 Effective Date, Trilegiant shall provide the additional sum of Two Million Three
19 Hundred Twenty-Five Thousand Dollars (\$2,325,000) ("Fund 2") to "Fund 2 Eligible
20 Consumers" in the Settling States, including Oregon. A Fund 2 Eligible Consumer is a
21 consumer who purchased one or more memberships in a Membership Program between
22 July 1, 2001 and ninety days after the Effective Date but is not a Fund 1 Eligible
23 Consumer, and who, no later than two hundred seventy (270) days after the Effective
24 Date, complains that he or she did not consent to, authorize, or understand that he or she
25 would be assessed a Membership Charge or would be assessed any charge in connection
26 with an Automatic Renewal, provided that the consumer: (1) purchased the membership
in the Membership Program through a Check or Non-Check Solicitation; (2) has not used

1 the benefits of the Membership Program for which he or she purchased a membership;
2 and (3) resided in one of the Settling States at the time he or she submitted the complaint.

3 To be eligible for restitution, the consumer must have either:

4 (1) sent his or her complaint to Defendants by Mail or by e-mail received
5 by Defendants and submitted through the "General Inquiries" or "Comments
6 Form" sections of the <http://www.trilegiant.com/> internet web site (or any internet
7 sites or addresses which may replace or supersede either of those sections or, if
8 applicable, that web site) on or before 270 days after the Effective Date; or

9 (2) sent his or her written complaint in any format to Plaintiff, one of the
10 other Settling States, or one of Defendants' Partners, provided that the complaint
11 is forwarded by the entity that receives it to Defendants by no later than 270 days
12 after the Effective Date.

13 Full restitution paid pursuant to this subparagraph shall consist of all membership fees
14 paid by the Fund 2 Eligible Consumer after July 1, 2001, less any refunds previously paid
15 or provided by Defendants. In the event that Two Million Three Hundred Twenty-Five
16 Thousand Dollars (\$2,325,000) plus any amount of Fund 1 made available for
17 distribution under the terms of this subparagraph is not sufficient to provide full
18 restitution to all consumers eligible to receive restitution pursuant to this subparagraph,
19 then restitution shall be distributed to Fund 2 Eligible Consumers on a pro rata basis. In
20 the event that the total payment due to consumers eligible to receive restitution pursuant
21 to this subparagraph is less than Two Million Three Hundred Twenty-Five Thousand
22 Dollars (\$2,325,000) plus any amount of Fund 1 made available for distribution under the
23 terms of this subparagraph, then the difference shall be paid to the Settling States,
24 excluding Ohio, no later than one year after the Effective Date as an additional sum paid
25 to the Settling States in accordance with and for the purposes stated in paragraph 9 below.
26 Oregon shall receive eight point four three one four four percent (8.43144%) of any such

1 remainder, to be deposited in the Consumer Protection and Education Revolving Account
2 provided by ORS 180.095.

3 C. Trilegiant shall, no later than twelve months after the Effective Date,
4 provide a final accounting and report to the Oregon Attorney General setting forth the
5 name, address and amount of restitution paid, for each consumer receiving restitution
6 who resided in one of the Settling States at the time he or she submitted the written
7 complaint pursuant to Paragraphs 8A and 8B above.

8 D. Defendants shall bear all of its costs incurred in complying with this
9 paragraph, including the costs of any third party administrator that may be hired to
10 distribute restitution pursuant to this paragraph.

11 V. PAYMENT TO THE STATES

12 9. Within three (3) business days after the Effective Date, Defendants shall pay, by
13 wire transfer or as otherwise directed by the Settling States, the total sum of Four Million, One
14 Hundred Seventy-Five Thousand Dollars (\$4,175,000), as payment for attorneys fees and
15 investigation and litigation costs, and/or consumer protection enforcement funds, consumer
16 education, litigation or local consumer aid, and other uses permitted by state law, at the
17 discretion of each state Attorney General, and to be divided and paid directly to each Settling
18 State. The specific amount to be paid to each Settling State pursuant to this paragraph has been
19 agreed to by the Settling States, at their sole discretion. The State of Oregon's share of this
20 settlement payment to be made by Defendants pursuant to this paragraph is Three Hundred Fifty
21 Seven Thousand, Eight Hundred and Forty Six dollars (\$357,846), which shall be deposited in
22 the Consumer Protection and Education Revolving Account provided by ORS 180.095.

23 VI. OTHER SETTLEMENT TERMS AND OBLIGATIONS

24 10. Upon reasonable prior written notice, any duly authorized representative of the
25 Oregon Attorney General shall be permitted to inspect and copy such records as may be
26 reasonably necessary to determine whether Defendants are in compliance with this Judgment.

11. Nothing in this Judgment shall be construed as:

1 A. Relieving the Defendants of their obligation to comply with all state and
2 federal laws, regulations or rules, or granting them permission to engage in any acts or
3 practices prohibited by such law, regulation or rule; or

4 B. Limiting or restricting in any way any right the State, the Attorney
5 General or any other agency may otherwise have to obtain information, documents or
6 testimony from Defendants pursuant to any state or federal law, regulation or rule.

7 C. Superseding any agreement, assurance, consent order, final judgment or
8 discontinuance that Defendants or Defendants' predecessors may have entered into with
9 any of the Participating States that does not cover the marketing of Membership
10 Programs offered through Check and Non-Check Solicitations. However, it is
11 understood that this Judgment shall supersede: (i) *Settlement Agreement re: In the Matter*
12 *of CUC International, Inc., Docket No. 92-717*, State of Connecticut Department of
13 Consumer Protection; and (ii) *Final Judgment and Permanent Injunction re: The People*
14 *of the State of California v. Shoppers Advantage*, Superior Court of the State of
15 California, County of Santa Cruz (filed Nov. 23, 1993), but only to the extent those
16 documents covered the marketing of Membership Programs offered through Check and
17 Non-Check Solicitations.

18 12. Nothing herein shall be construed as an admission by Defendants of any of the
19 allegations raised by Plaintiff, any matter or fact or law, any violation of any law, or any other
20 liability or wrongdoing.

21 13. The Attorney General shall have the authority to enforce the provisions of this
22 Judgment or to seek sanctions for violations hereof, or both.

23 14. If Plaintiff receives a request for documents provided by Defendants in
24 connection with its investigation of this matter or this Stipulated Judgment, Plaintiff shall comply
25 with applicable disclosure laws but shall promptly provide notice of such request that will afford
26 Defendants the reasonable opportunity to assert that the documents subject to the request are
exempt from disclosure.

1 15. This Judgment constitutes a complete settlement and release by the Attorney
2 General of Oregon of all civil claims and causes of action against Defendants, and their
3 successors, assigns and subsidiaries, including any of their officers, agents, directors, servants,
4 employees, or salespersons, with respect to the marketing of Membership Programs offered
5 through Check and Non-Check Solicitations, which were asserted by Plaintiff in its complaint in
6 this matter or could have been brought prior to the date of entry of this Judgment pursuant to the
7 UTPA or other similar consumer protection laws which give the Attorney General the authority
8 to sue, but does not release any anti-trust or tax claims.

9 16. The Court retains jurisdiction as the ends of justice may require for the purpose of
10 enabling any party to this Judgment to apply to the Court at any time for such further orders and
11 directions as may be necessary or appropriate. This includes Defendants' right to petition the
12 Court to modify the injunctive terms of the Final Judgment, upon giving at least 45 days written
13 notice to Plaintiff.

14 17. In the event that any statute or regulation pertaining to the subject matter of this
15 Injunction is modified, enacted, promulgated or interpreted by the State or by the Federal
16 government or any Federal agency, such that Defendants contend the statute or regulation is in
17 conflict with any provision of this Judgment and therefore that Defendants cannot comply with
18 both the statute or regulation and the provision of this Judgment, Defendants shall provide
19 advance written notice of at least 45 days to the Attorney General of Oregon of the inconsistent
20 provision of the statute or regulation with which Defendants intend to comply and of the
21 counterpart provision of this Judgment that Defendants contend is in conflict with the statute or
22 regulation. If the Attorney General disagrees, he or she shall within 30 days of receipt of
23 Defendant's notice notify Defendants that the Attorney General does not agree there is a conflict
24 between the requirements of the Judgment and the newly enacted state or federal law. If
25 Defendants disagree with Attorney General's contention that there is no conflict, Defendants
26 shall comply with the terms of the Judgment until such time as Defendants obtain a court order
modifying the Judgment. Any contention by Defendants that a provision of this Judgment

1 conflicts with a judgment in an action brought by Plaintiff against, or any agreement between
2 Plaintiff and, one or more of Defendants' Partners shall also be resolved pursuant to the
3 provisions of this paragraph.

4 18. Notices to be given under this Injunction are sufficient if given by nationally
5 recognized overnight courier service or certified Mail (return receipt requested), or personal
6 delivery to the named party at the address below:

7 A. If to Trilegiant Corporation or TRL Group, Inc.:

8 President
9 Trilegiant Corporation
10 100 Connecticut Avenue
11 Norwalk, Connecticut 06850

11 with a copy to:
12 General Counsel
13 Trilegiant Corporation
14 100 Connecticut Avenue
15 Norwalk, Connecticut 06850

16 Ronald R. Urbach
17 Davis & Gilbert LLP
18 1740 Broadway
19 20th Floor
20 New York, New York 10019

21 B. If to the State:

22 Chin See Ming
23 Oregon Department of Justice
24 Civil Enforcement Division
25 Financial Fraud/Consumer Protection Section
26 1162 Court Street NE
Salem, OR 97301-4096

Notice is effective when delivered personally; or three (3) business days after it is sent by
certified Mail; or on the business day after it is sent by nationally recognized courier service for
next day delivery. Any party may change its notice address by giving notice in accordance with
this paragraph.


1 19. The Attorney General of Oregon shall make reasonable efforts to notify the
2 defendants in writing, prior to instituting any action to enforce this Judgment, that the State
3 believes the Defendants to be in violation of any provision of this Judgment. The notice to the
4 defendants shall set forth the basis for the State's belief that Defendants have violated any
5 provision of this Judgment. Notwithstanding the foregoing, such notice is not a jurisdictional
6 prerequisite for the State to institute an enforcement action.

7 20. The Clerk is ordered to enter this Judgment forthwith.

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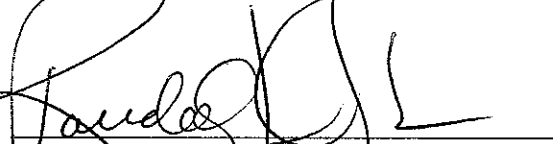
1 21. Defendants' obligation to comply with the operative terms of this injunction as
2 reflected in paragraphs 5 to 7 shall commence 90 days after the Effective Date, as that term is
3 defined in paragraph 4(F), above.

4 DATED this 11 day of December, 2006.

5
6
7
8 
9 Circuit Judge for Marion County

9 IT IS SO STIPULATED:

10 **TRILEGIANT CORPORATION**

11 

12
13 Randolph C. Foster, OSB No. 78434
14 Stoel Rives LLP
15 900 SW 5th Ave., Suite 2600
16 Portland, OR 97204
17 Tel.: (503) 294-9453
18 Fax: (503) 220-2480
19 E-Mail: rcfooster@stoel.com

18 Ronald R. Urbach
19 Davis & Gilbert LLP
20 1740 Broadway, 20th Floor
21 New York, NY 10019
22 Tel.: (212) 468-4800
23 Fax: (212) 468-4888
24 E-Mail: rurbach@dglaw.com

22 Attorneys for Defendant Trilegiant Corporation

23 Dated: _____

10 **TRL GROUP, INC. (Predecessor-in-Interest
to TRILEGIANT CORPORATION)**

11 

12
13 Randolph C. Foster, OSB No. 78434
14 Stoel Rives LLP
15 900 SW 5th Ave., Suite 2600
16 Portland, OR 97204
17 Tel.: (503) 294-9453
18 Fax: (503) 220-2480
19 E-Mail: rcfooster@stoel.com

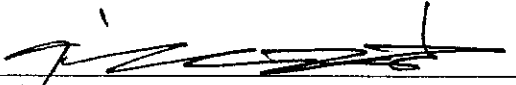
18 Ronald R. Urbach
19 Davis & Gilbert LLP
20 1740 Broadway, 20th Floor
21 New York, NY 10019
22 Tel.: (212) 468-4800
23 Fax: (212) 468-4888
24 E-Mail: rurbach@dglaw.com

22 Attorneys for Defendant TRL Group, Inc.

23 Dated: _____

1 **HARDY MYERS**

2 Attorney General

3 
4 Chin See Ming, OSB No. 94949
5 Senior Assistant Attorney General
6 Department of Justice
7 1162 Court Street NE
8 Salem, OR 97301-4096

9 Tel.: (503) 947-4333

10 Fax: (503) 378-5071

11 E-Mail: chin.s.ming@doj.state.or.us

12 Attorneys for Plaintiff State of Oregon

13 Dated: December 11, 2006