

<p>DISTRICT COURT, COUNTY OF BROOMFIELD COLORADO Broomfield Combined Courts 17 Descombes Drive, Broomfield, CO 80020</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> PHILIP J. WEISER, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>MOUNTAIN VIEW PUBLISHERS, LLC</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.</p> <p>Div.:</p>
<p>CONSENT JUDGMENT</p>	

This matter is before the Court on the Stipulation for Entry of a Final Consent Judgment under C.R.C.P. 58(a), subject to the provisions of C.R.C.P. 54(b), by Plaintiff, State of Colorado, ex rel. Philip J. Weiser, Attorney General (the “Colorado Attorney General” or “Attorney General”) for the State of Colorado (the “State”) and Defendant Mountain View Publishers, LLC (“Mountain View Publishers”). All parties are hereafter referred to collectively as “the Parties.”

The Court, fully advised in this matter, FINDS, CONCLUDES, AND ORDERS:

- 1) that it has jurisdiction over the Parties and the subject matter of this suit under the grounds alleged in the Complaint by the Attorney General; and
- 2) that venue in Broomfield County is proper; and
- 3) that the Parties shall be subject to the following provisions:

I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, et seq. C.R.S., 2021. (“CCPA”).

1.2 Release of Claims. The Attorney General acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA on behalf of the STATE against MOUNTAIN VIEW PUBLISHERS, its owner(s), employees and former employees, with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA in the Complaint, that arose prior to this date and relating to or based upon the acts or practices which are the subject of the Complaint filed in this action. The Attorney General agrees that it shall not proceed with or institute any civil action or proceeding under the CCPA against MOUNTAIN VIEW PUBLISHERS, including, but not limited to, an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys’ fees, or costs, for any conduct or practice prior to the date of entry of this Final Consent Judgment which relates to the subject matter of the Complaint filed in this action.

1.3 Liability. All parties are entering into this Final Consent Judgment for the purpose of compromising and resolving all of the disputed claims and to avoid the expense of further litigation and without a finding or admission of liability or fault of any kind. MOUNTAIN VIEW PUBLISHERS denies any fault or liability of any kind,

denies all the allegations in the litigation, and denies it has caused any harm of any nature.

1.4 Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of this Final Consent Judgment, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of MOUNTAIN VIEW PUBLISHERS not covered by this Complaint and Final Consent Judgment or any acts or practices of MOUNTAIN VIEW PUBLISHERS conducted after the entry of this Final Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves MOUNTAIN VIEW PUBLISHERS of its duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the Attorney General for MOUNTAIN VIEW PUBLISHERS to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the State of Colorado.

1.6 Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of MOUNTAIN VIEW PUBLISHERS' past or future business practices. MOUNTAIN VIEW PUBLISHERS shall not make any representation contrary to this paragraph.

1.7 Third Party Claims. Nothing herein shall be construed as a waiver of any rights of third parties, including the rights of consumers to seek restitution or other remedies through other actions.

1.8 Use of Settlement as Defense. Nothing herein shall be interpreted to prevent the Attorney General from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the Attorney General believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Final Consent Judgment shall not be a defense to any such enforcement action.

1.9 Use of Settlement in Business Activity. Under no circumstances shall this Final Consent Judgment, the name of the Attorney General, or the names of any of the STATE's employees or representatives be used by MOUNTAIN VIEW PUBLISHERS or any of its employees, representatives, or agents as an endorsement of any conduct, past or present, by MOUNTAIN VIEW PUBLISHERS.

1.10 Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Final Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Final Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

1.11 Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment may give rise to all contempt remedies available to the Court, including those provided under C.R.S § 6-1-112(1)(b).

1.12 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.13 Severability. If any provision(s) of this Final Consent Judgment is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.14 Successors in Interest. The terms and provisions of this Final Consent Judgment may be enforced by the current Colorado Attorney General, and by any of the Attorney General's authorized agents or representatives, as well as by any of the Attorney General's successors in interest, agents, or representatives.

1.15 Amendment. This Final Consent Judgment may be amended solely by written agreement signed by the Attorney General and MOUNTAIN VIEW PUBLISHERS.

1.16 Notice. Whenever MOUNTAIN VIEW PUBLISHERS shall provide notice or any other documents to the Colorado Attorney General under this Consent Judgment, that requirement shall be satisfied by sending notice to:

Abigail M. Hinchcliff
First Assistant Attorney General
Consumer Fraud Unit
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, CO 80203
abigail.hinchcliff@coag.gov

Any notice or other documents sent to MOUNTAIN VIEW PUBLISHERS by the Colorado Attorney General under this Consent Judgment shall be sent to:

<p>Bruce Asay, Esq. Associated Legal Group, LLC 1812 Pebrican Ave. Cheyenne, WY 82001</p>	<p>Andrew Lustigman, Esq. Olshan Frome Wolosky LLP 1325 Avenue of the Americas New York, NY 10019</p>
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1.18 Definitions. Unless otherwise stated herein, all terms herein that are defined in the CCPA shall be given the definition provided by the CCPA.

a) “Subscription Offer” refers to the solicitation or offer made by Mountain View Publishers to purchase a subscription to a magazine or other periodical such as the “Jackpot Journal.”

b) “Automatic Renewal Terms” means the terms under which a consumer’s bank account or credit card will be charged after the acceptance of the Subscription Offer for initiation or renewal of a recurring or automatically renewed subscription. Automatic Renewal Terms includes notice to the consumer that they are entering into a recurring or automatically renewed subscription, the amount of the charge the time period covered by the subscription charge, the number of periodicals the consumer will receive during the time period, and the means by which a consumer may cancel the recurring or automatically renewed subscription. The required mechanism for disclosure of Automatic Renewal Terms, and related obligations, is further described in Provisions 11-16, below.

II. PERMANENT INJUNCTION

2.1 Effective immediately, this Court PERMANENTLY ENJOINS MOUNTAIN VIEW PUBLISHERS and any other person under its control or at its direction who receives actual notice of this Order, as follows:

In any representation to consumers for the sale of a sweepstakes-related publication MOUNTAIN VIEW PUBLISHERS is enjoined from:

- 1) Failing to clearly disclose that the advertisement, promotion, or offer for sale of any product or service is being distributed for the purpose of soliciting a

purchase, along with a description of the goods or services being sold and the total price thereof; and

2) Failing to clearly disclose the approximate retail value of any awarded item which a consumer can receive by purchase or by payment of shipping and handling in close proximity to the first description of the awarded item. The retail value shall be disclosed in clear and conspicuous type size and boldness. If the advertisement, promotion, or offer for sale includes statements about multiple prizes, one or more of which the consumer has not won, the advertisement, promotion, or offer for sale shall make clear that the items are available to enter to win, but that the consumer has not yet won such item(s); and

3) Representing that any publication marketed through its solicitations is anything other than a “magazine,” “journal” “guide” or “publication,” or words to similar effect that accurately describe the publication. MOUNTAIN VIEW PUBLISHERS shall not imply that by purchasing the publication, the recipient has won a particular sweepstakes promoted in the publication. For example, MOUNTAIN VIEW PUBLISHERS will not describe its publication as an “awards portfolio” or “awards assessment”; and

4) Describing the publication marketed through its solicitations as “limited,” “exclusive,” “personal,” or words to that effect when such is not the case; or that the recipient has been “verified,” or “confirmed” for a prize that they had not won at the time of the representation; and

- 5) Stating or implying that the consumer's purchase of the publication requires "matching," "authorization," "clearance," or words to that effect by MOUNTAIN VIEW PUBLISHERS; and
- 6) Falsely stating or implying that MOUNTAIN VIEW PUBLISHERS' subscription solicitations are time sensitive, for example, by using phrases such as "deadlines in effect" regarding any prize, good, or monetary amount the customer cannot presently claim, including the opportunity to become informed about such prize, goods, or monetary amounts; and
- 7) Stating or implying that an opportunity is time-sensitive if a consumer could claim an item (for example, by paying shipping or handling) at any time beyond the advertised window or at any time; and
- 8) Describing a consumer's choice to not accept MOUNTAIN VIEW PUBLISHERS' Subscription Offer as a failure, loss of a prize, or through language which implies the solicited consumer will face a negative consequence by choosing to not accept the Subscription Offer. Notwithstanding the foregoing, MOUNTAIN VIEW PUBLISHERS may inform customers that their decision not to subscribe will result in the consumer not receiving the publication and its information, including information about sweepstakes; and
- 9) Using sweepstakes or award-related language, such as "recipient," "entry," or "claiming," to describe the act of responding to the subscription solicitation, the payment for the publication, the delivery of the publication, or the receipt

of an item available upon payment, including payment of shipping and handling; and

10) If such is not the case, suggesting or implying that the consumer has already been entered into, or has won a sweepstakes or raffle, for example, by stating that the consumer, the consumer's address, or the solicitation itself, has been "verified," "confirmed," "authorized," "approved," or similar terms, or suggesting or implying that amounts are reserved, set aside, or will be disbursed to the consumer, or words to similar effect to describe the solicitation of the consumer for the subscription, the act of responding to the subscription solicitation, the payment for the publication, or the delivery of the publication.

Regarding language designed to obtain the solicited consumer's consent to purchase a subscription from MOUNTAIN VIEW PUBLISHERS, with automatic renewal terms, MOUNTAIN VIEW PUBLISHERS is enjoined from:

11) Failing to present the Subscription Offer and Automatic Renewal Terms in a clear and conspicuous manner, and in close proximity to the mechanism for obtaining consumers' consent to recurring payments. This mechanism includes

- a. a box for the solicited consumer to check, indicating that they consent to recurring payments and the automatic debiting of their account; or
- b. a signature line for the solicited consumer to sign that acknowledges consent to recurring payments and the automatic debiting of their account.

12) Failing to provide a confirmation by U.S. Mail or email to the subscribing consumer, prior to any first debiting of the consumer's account for the full-price subscription, that clearly and conspicuously:

- a. indicates receipt by MOUNTAIN VIEW PUBLISHERS of the solicited consumer's acceptance of the Subscription Offer; and
- b. states the name of the publication that is the subject of the Subscription Offer; and
- c. advises the solicited consumer of the Automatic Renewal Terms; and
- d. advises the consumer of MOUNTAIN VIEW PUBLISHERS' cancellation policy, and information regarding how to cancel by means of a toll-free telephone number, electronic mail address, or mail.

13) Failing to send an annual notice by mail, to any consumer who has accepted the Subscription Offer which clearly provides the same information described in the above Provision 12.

14) Failing to provide a simple method for cancellation, including a toll-free telephone number, or a one-click option on an easily accessible website.

15) Failing to provide advance notice of any material changes to the Subscription Offer agreement, including changes in price, through a letter sent to the consumer by U.S. Mail or email. The letter must clearly describe the material change and offer the consumer the opportunity to cancel the subscription at no additional cost.

16) Nothing in this Consent Judgment shall be deemed to release MOUNTAIN VIEW PUBLISHERS from complying with any auto-renewal contract requirements set forth in any state or federal law.

17) If the Attorney General determines that MOUNTAIN VIEW PUBLISHERS has failed to comply with any provision of this Consent Judgment, and if in the Attorney General's sole discretion, the failure to comply does not threaten the health, safety, or welfare of the citizens of Colorado, the Attorney General will notify MOUNTAIN VIEW PUBLISHERS in writing and specify the issue of noncompliance. MOUNTAIN VIEW PUBLISHERS shall then have fifteen (15) business days after receipt of the written notice to provide a written response to the Attorney General, which may include (a) a statement why MOUNTAIN VIEW PUBLISHERS believes it is in compliance with the Consent Judgment; or (b) a statement explaining how the alleged breach occurred, and how and when it will be addressed or corrected, as necessary.

III. MONETARY PROVISIONS

3.1 MOUNTAIN VIEW PUBLISHERS shall pay to the STATE the sum of \$250,000, payable in 24 monthly installments beginning 30 days after the date of filing for the Consent Judgment. The first 23 installments shall be in the amount of \$10,500, with the final installment in the amount of \$8,500. MVP shall not be obligated to make any other payments in connection with this settlement. The Parties shall bear their own attorneys' fees, costs, and expenses.

MOUNTAIN VIEW PUBLISHERS shall send payment by check, made payable to the Colorado Department of Law with a reference to “Mountain View Publishers.” The payment shall be delivered via either FedEx, UPS, or USPS, so long as the delivery may be tracked. The mailer containing the payment shall be addressed to:

Emily Lujan, Program Assistant
c/o Abigail M. Hinchcliff, First AAG
Consumer Fraud Unit
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

3.2 The above-described payment by MOUNTAIN VIEW PUBLISHERS to the Colorado Department of Law is to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

3.3 If MOUNTAIN VIEW PUBLISHERS fails to make the payments described in provision 3.1 when due and falls more than 90 days behind in its payment obligations, the Colorado Attorney General shall be entitled to immediate entry of judgment against the MOUNTAIN VIEW PUBLISHERS for the full amount owed, plus interest at the rate of eight (8) percent annum, as set forth in section 5-12-102, C.R.S. (2021). The Colorado Attorney General shall provide notice to MOUNTAIN VIEW PUBLISHERS, and the attorneys listed in provision 1.17, prior to the filing of a Motion for Entry of Judgment.

IV. REPRESENTATIONS AND WARRANTIES

4.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving MOUNTAIN VIEW PUBLISHERS of its obligation to comply with all state and federal laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

4.2 MOUNTAIN VIEW PUBLISHERS acknowledges that it has thoroughly reviewed this Final Consent Judgment, that it understands and agrees to its terms, and that they agree that it shall be entered as an Order of this Court.

V. ENFORCEMENT OF FINAL CONSENT JUDGMENT

5.1 In any action brought by the Attorney General to enforce this Final Consent Judgment, MOUNTAIN VIEW PUBLISHERS consents to personal and subject matter jurisdiction in the Broomfield County District Court. MOUNTAIN VIEW PUBLISHERS further consents to domestication of any judgment related to violations of this Consent Judgment in any state court within the United States. This Consent Judgment is governed by the laws of the State of Colorado.

SO ORDERED and SIGNED this _____ day of _____, 2022.

BY THE COURT:

District Court Judge

ORIGINAL SIGNATURE PAGES OF THE PARTIES ARE ATTACHED AS
“ATTACHMENT A”

The undersigned parties enter into this Final Consent Judgment in this matter, *State of Colorado, ex re. Philip J. Weiser, Attorney General v. Mountain View Publishers, LLC.*

On behalf of the Colorado Attorney General,

(Signature)_____

(Date)_____

JEFFREY M. LEAKE, 38338*
Senior Assistant Attorney General
ABIGAIL M. HINCHCLIFF, 47942*
First Assistant Attorney General
Consumer Protection Section
Attorneys for Plaintiff

On behalf of Mountain View Publishers,

(Signature)_____

(Date)_____

Robert Miller, President.