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KING COUNTY
SUPERIOR COURT

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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

PRIVASAFE, LLC, a wholly owned subsidiary of Consumer Digital Services; SURFSAFE INTERNET SERVICES, a wholly owned subsidiary of JSE Direct, LLC; CONSUMER DIGITAL SERVICES, LLC, a Delaware limited liability company; LEVERAGE-CDS, LLC, a Delaware limited liability company and Member of Consumer Digital Services; JSE DIRECT LLC, a wholly owned subsidiary and Member of CONSUMER DIGITAL SERVICES; CDS FAMILY TRUST, a New Jersey Trust and Member of Consumer Digital Services; AMP-CDS, LLC, Delaware limited liability company and Member of Consumer Digital Services; JG-CDS, LLC, Member of Consumer Digital Services, LLC; GARY SALMIRS, Manager of Leverage-CDS, LLC, individually and as a part of his marital community,

Defendants.

CONSENT DECREE

07-2-20525-0SEA

I. JUDGMENT SUMMARY

1.1. Judgment Creditor: State of Washington

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1.2. Judgment Debtors:

Consumer Digital Services, LLC
Privasafe, LLC
Surfsafe Internet Services
Leverage CDS, LLC
JSE Direct, LLC
AMP-CDS, LLC
CDS Family Trust
JG-CDS, LLC
Gary Salmirs, Manager of Leverage-CDS,
LLC, individually and as part of his
Marital Community

1.3. Principal Judgment Amount:

- a. Civil Penalties: \$300,000.00 (with \$200,000.00 suspended upon compliance with this Consent Decree)
- b. Restitution See Section IV.
- c. Costs and Attorneys' Fees: \$200,000.00

1.4. Total Judgment: \$500,000.00 (with \$200,000.00 suspended upon compliance with this Consent Decree)

1.5. Attorney for Judgment Creditor: Katherine M. Tassi, Assistant Attorney General

1.6. Attorney for Judgment Debtors: Lewis Rose, Esq.
Kelley, Drye & Warren LLP
Sally Gustafson Garratt, Esq.
Benedict Garratt Ponds PLLC

Plaintiff, State of Washington, having commenced this action on June 21, 2007, pursuant to the Unfair Business Practices--Consumer Protection Act ("Consumer Protection Act"), chapter 19.86 RCW.

Defendants Consumer Digital Services, LLC; Privasafe, LLC; Surfsafe Internet Services; Leverage-CDS, LLC; JSE Direct, LLC; CDS Family Trust; AMP-CDS, LLC; JG-CDS, LLC; and Gary Salmirs (together, "Defendants"), having been served with a Summons and Complaint previously filed in this matter or having waived service; and

1 Plaintiff appearing by and through its attorneys, Robert M. McKenna, Attorney General;
2 and Katherine M. Tassi, Assistant Attorney General; and Defendants appearing by and through
3 their attorneys, Lewis Rose, Esq., and Sally Gustafson Garratt, Esq.; and

4 Plaintiff and Defendants having agreed on a basis for the settlement of the matters alleged
5 in the Complaint, and to the entry of this Consent Decree against Defendants without the need for
6 trial or adjudication of any issue of law or fact; and

7 Plaintiff and Defendants having agreed that this Consent Decree does not constitute
8 evidence or an admission regarding the existence or non-existence of any issue, fact, or violation
9 of any law alleged by Plaintiff; and

10 Defendants recognize and state that this Consent Decree is entered into voluntarily and
11 that no promises or threats have been made by the Attorney General's Office or any member,
12 officer, agent or representative thereof to induce them to enter into this Consent Decree, except as
13 provided herein; and

14 Defendants waive any right they may have to appeal from this Consent Decree; and

15 Defendants further agree that they will not oppose the entry of this Consent Decree on the
16 grounds the Consent Decree fails to comply with Rule 65(d) of the Rules of Civil Procedure, and
17 hereby waive any objections based thereon; and

18 Defendants further agree that this Court shall retain jurisdiction of this action for the
19 purpose of implementing and enforcing the terms and conditions of the Consent Decree and for all
20 other purposes; and

21 The Court finding no just reason for delay;

22 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as
23 follows:
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II. GENERAL

2.1. Jurisdiction. This Court has jurisdiction of the subject matter of this action and of the parties. Plaintiff's Complaint in this matter states claims upon which relief may be granted under the provisions of the Consumer Protection Act, Chapter 19.86 RCW.

2.2. Defendants. For purposes of this Consent Decree, the term "Defendants" where not otherwise specified shall mean Consumer Digital Services, LLC; Privasafe, LLC; SurfSAFE Internet Services; Leverage-CDS, LLC; JSE Direct, LLC; CDS Family Trust; AMP-CDS, LLC; JG-CDS, LLC; and Gary Salmirs.

2.3. Definitions. For the purposes of this Consent Decree, the term "clearly and conspicuously" or "clear and conspicuous" means (i) in a typeface that is of a size and contrast (shade) that is readily noticeable, readable, and understandable, and (ii) in a readily noticeable location. For the purposes of this Consent Decree, the term "personal information" means the consumer's first and last name (or first initial and last name) combined with the consumer's electronic mail address, phone number, credit card or debit card number, or full birth date.

III. INJUNCTIONS

3.1. Application of Injunctions. The injunctive provisions of this Consent Decree shall apply to Defendants, and Defendants' successors, assigns, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or participation with Defendants.

3.2. Notice. Within five (5) business days of entry of this Decree, Defendants shall inform all successors, assigns, transferees, officers, agents, servants, employees, representatives, attorneys and all other persons or entities in active concert or participation with Defendants in the Complaint, including, but not limited to, its marketing partners, of the terms and conditions of this Consent Decree.

3.3. Injunctions. Defendants and its successors, assigns, transferees, officers, agents, servants, employees, representatives, and all other persons or entities in active concert or

1 participation with Defendants are hereby permanently enjoined and restrained from directly or
2 indirectly engaging in the following acts or practices:

3 a) In the context of any advertising, marketing, or sale of, or offer for, services or
4 products:

5 (1) failing to provide clear and conspicuous disclosure of all material terms of
6 the offer for or sale of the product or service, including, but not limited to, the cost and billing
7 method:

8 (i) prior to the consumer's initiation of the purchase of the product or
9 service; and

10 (ii) prior to the collection of any personal information from the
11 consumer;

12 (2) misrepresenting, directly or by implication, any material feature of the
13 product or service, including, but not limited to, the material features, including price, of any
14 software offered as part of the product or service, whether or not the software is included for an
15 additional charge, or any material terms of the offer;

16 (3) failing to disclose clearly and conspicuously, or misrepresenting, either
17 directly or by implication, the material terms associated with the collection and use of
18 consumers' personal information prior to the collection of any personal information;

19 (4) failing to disclose clearly and conspicuously, or misrepresenting, directly or
20 by implication, the material terms and conditions that apply to an offer for a "free" product,
21 service, or item; and

22 (5) using a pre-checked box, or its equivalent, to indicate a consumer's
23 authorization to be billed by Defendants for any service or product.
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1 b) Using, selling, licensing, or transmitting in any manner, any information
2 collected from or about Washington consumers between January 1, 2004, and the date of entry
3 of this Decree for any commercial purpose, including, but not limited to, advertising,
4 marketing, and selling.

5 c) Violating any provisions of the Unfair-Business Practices - Consumer
6 Protection Act, RCW 19.86.

7 IV. RESTITUTION

8 4.1. Pursuant to RCW 19.86.080, Defendants shall pay consumer restitution as
9 follows. Within thirty (30) days of entry of the Consent Decree, Defendants shall contact all
10 Washington consumers who were billed but not credited for any amount of money for Privasafe
11 or SurfSafe Internet Services since January 1, 2004, by means of electronic mail and offer them
12 complete refunds for all amounts paid. Consumers shall have sixty (60) days to make a request
13 for a refund. Defendants shall contact by U.S. mail all consumers who have not replied to the
14 electronic mail at the end of the sixty-day period. The letter and electronic mail message should
15 read:
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17 “Dear Washington Consumer:

18 Our records indicate that between 2004 and 2007, you responded to an offer for a free
19 gift card or other similar item. As a result, you were billed for a service called Privasafe or
20 SurfSafe Internet Services and the charges appeared on your local telephone bill. Pursuant to a
21 settlement agreement reached between Consumer Digital Services (doing business as Privasafe
22 and SurfSafe Internet Services) and the Washington State Attorney General’s Office, you are
23 eligible for a refund for the full amount that you paid for either service. If you have already
24 received a partial refund, you are still eligible to receive a refund for the remaining amount that
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1 you were billed for and paid. To receive your refund, please complete the attached or included
2 form and either mail it to: [insert postal address] or email it to: [insert email address] no later
3 than: [insert 60 days from the date of sending the email or letter.] If you have already received
4 a full refund through your telephone company, you are not eligible for this refund. To learn
5 more about the refund program, please call the Washington State Attorney General's Office's
6 Consumerline toll-free at 1-800-692-5082 or locally at 206-464-6811. You may also visit the
7 Web site for the Washington State Attorney General's Office at www.atg.wa.gov."

9 4.2. Defendants are not required to contact consumers who have already been
10 refunded the full amount billed, where Defendants have a record of such a refund.

11 4.3. The attached or included form should only require the consumer to identify his
12 or her name, phone number billed, and address, and to state that they paid the amount billed and
13 did not receive a refund from any other source.

14 4.4 Within twenty (20) days of the end of the restitution period (which end date
15 should be calculated at one-hundred-thirty (130) days from date the electronic mail messages
16 are sent to Washington consumers), Defendants shall mail refund checks for amounts
17 previously billed but not credited to all eligible Washington consumers from whom Defendants
18 received refund request forms as described in paragraph 4.1 above.

19 4.5. Within thirty (30) days following the end of the restitution claim period (which
20 end date should be calculated at one-hundred-thirty (130) days from date the electronic mail
21 messages are sent to Washington consumers), Defendants shall provide to Plaintiff a report
22 identifying the names, addresses, telephone numbers, amounts and dates of refunds made to all
23 Washington consumers. Defendants shall also identify separately all Washington consumers
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1 from whom Defendants did not receive a refund request, including their names, addresses,
2 phone numbers, and email addresses, and the dates Defendants sent email messages and letters
3 to them by U.S. mail. Defendants shall also identify separately by name, address, and phone
4 number all Washington consumers whom Defendants did not contact pursuant to the exception
5 in paragraph 4.2.

6
7 4.6. Defendants shall attest to the accuracy of the report and to the accuracy of all of
8 the records upon which they relied in order to issue the refunds. Defendants shall retain copies
9 of all transmissions and correspondences to and from the consumers they contact and shall
10 produce them upon the request of Plaintiff.

11 **V. CIVIL PENALTIES**

12
13 5.1. Pursuant to RCW 19.86.140, Plaintiff shall have and recover, and Defendants shall
14 be liable for and shall pay, civil penalties in the amount of \$300,000.00, of which \$200,000.00
15 shall be suspended upon full compliance with this Decree.

16 5.2. Payment owing under this provision shall be in the form of a valid check paid to
17 the order of the "Attorney General—State of Washington" within five (5) business days of the
18 entry of the Decree. Payment shall be sent to the Office of the Attorney General, Attention:
19 Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle,
20 Washington, 98104-3188.

21 **VI. ATTORNEY COSTS AND FEES**

22 6.1. Pursuant to RCW 19.86.080, Plaintiff shall recover and Defendants shall pay the
23 costs and reasonable attorneys' fees incurred by the Plaintiff in pursuing this matter in the amount
24 of \$200,000.00.

25 6.2. Payment owing under this provision shall be in the form of a valid check paid to
26 the order of the "Attorney General—State of Washington" and shall be due and owing on July

1 16, 2007. Payment shall be sent to the Office of the Attorney General, Attention: Cynthia
2 Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle,
3 Washington, 98104-3188.

4 **VII. ENFORCEMENT**

5 7.1. Violation of any of the terms contained in this Consent Decree shall subject
6 Defendants to a civil penalty of up to \$25,000.00 per violation pursuant to RCW 19.86.140. In
7 the event the Attorney General believes that Defendants may have violated any terms of this
8 Decree, representatives of the Office of the Attorney General shall give written notice via certified
9 mail to Defendants and to Defendants' counsel, designated by Defendants as Lewis Rose of
10 Kelley Drye & Warren, of the specific alleged violation(s) and allow Defendants fourteen (14)
11 days to respond to the notice and to cure the alleged violation(s) prior to bringing an enforcement
12 action pursuant to this paragraph. If, after fourteen (14) days, the Attorney General alleges that
13 the violation has not been cured, the Attorney General will give reasonable notice to Defendants'
14 designated counsel that it believes that the violation has not been cured prior to bringing an
15 enforcement action pursuant to this paragraph.

16 7.2. For purposes of monitoring compliance with this Decree, for three (3) years after
17 the date of entry of this Decree, Defendants shall compile and maintain records, to be made
18 available at the request of the Attorney General, of (a) all advertisements used by Defendants for
19 any of Defendants' services or products; (b) contact information for all Washington customers of
20 Defendants' services or products; (c) usage of Defendants' services by Washington customers; (d)
21 complaints relating to Washington consumers; (e) refunds to Washington consumers; and (f)
22 gross amounts processed and billed monthly to Washington consumers. Following the end of the
23 three-year period, if the Attorney General determines that Defendants have complied fully with
24 the terms of this Decree, the suspended portion of the civil penalties shall be extinguished.

1 7.3. In any action to enforce the terms of this Decree, Plaintiff may seek additional
2 remedies, including, but not limited to, restitution, injunctive relief, and reasonable attorneys' fees
3 and costs, in addition to any other remedies permitted by law.

4 7.4. This Consent Decree is entered pursuant to RCW 19.86.080. Jurisdiction is
5 retained for the purpose of enabling any party to this Consent Decree with or without the prior
6 consent of the other party to apply to the Court at any time for enforcement of compliance with
7 this Consent Decree, to punish violations thereof, or to modify or clarify this Consent Decree.

8 7.5. Representatives of the Office of the Attorney General shall be permitted to access,
9 inspect and/or copy all business records or documents under control of Defendants in order to
10 monitor compliance with this Consent Decree within fourteen (14) days of written request to
11 Defendants, provided that the inspection and copying shall be done in such a way as to avoid
12 disruption of Defendants' business activities. Failure to comply with this section will be
13 considered a violation of the terms of this Consent Decree.

14 7.6. Representatives of the Office of the Attorney General may be permitted to
15 question Defendants, or any officer, director, agent, or employee of any business organization
16 affiliated with Defendants, in the form of a deposition, pursuant to the provisions and notice
17 requirements of CR 30, and to issue interrogatories and requests for production of documents,
18 pursuant to the provisions and notice requirements of CR 33 and CR 34, in order to monitor
19 compliance with this Consent Decree.

20 7.7. Nothing in this Consent Decree shall be construed as to limit or bar any other
21 governmental entity or consumer from pursuing other available remedies against Defendants.

22 7.8. Under no circumstances shall this Consent Decree or the name of the State of
23 Washington, the Office of the Attorney General, Consumer Protection Division, or any of their
24 employees or representatives be used by Defendants in connection with any selling, advertising,
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1 or promotion of products or services, or as an endorsement or approval of Defendants' acts,
2 practices or conduct of business.

3 7.9 This Consent Decree resolves with prejudice all issues raised by the Attorney
4 General under the Consumer Protection Act pertaining to the acts or omissions addressed in the
5 Complaint filed in this matter that may have occurred before the date of the entry of this Consent
6 Decree.

7
8 **VIII. DISMISSAL AND WAIVER OF CLAIMS**


8.1 Upon entry of this Consent Decree, all claims in this matter not otherwise
9 addressed by this Consent Decree are dismissed. **JUN 21 2007**

10 DONE IN OPEN COURT this _____ day of _____, 2007.

11
12 **CARLOS VELATEGUI**
13 JUDGE/COURT COMMISSIONER

14 Approved for entry and presented by:

15 ROBERT M. MCKENNA
16 Attorney General

17 
18 KATHERINE M. TASSI, WSBA #32908
19 Assistant Attorney General
20 Attorneys for Plaintiff
21 State of Washington

Approved for Entry, Notice of
Presentation Waived:

22 CONSUMER DIGITAL SERVICES, LLC
23 Defendant

24 PRIVASAFE, LLC

25 SURFSAFE INTERNET SERVICES

26 LEVERAGE-CDS, LLC

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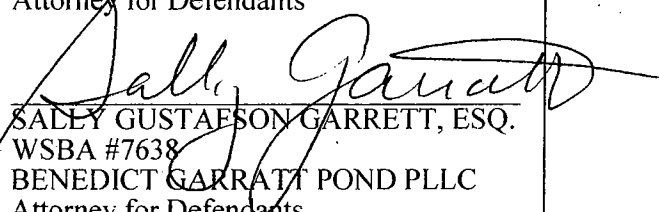
JSE DIRECT LLC,

CDS FAMILY TRUST

AMP-CDS, LLC

GARY SALMIRS
Defendant

LEWIS ROSE, ESQ.
KELLY, DRYE & WARREN LLP
Attorney for Defendants




SALLY GUSTAFSON GARRETT, ESQ.
WSBA #7638
BENEDICT GARRATT POND PLLC
Attorney for Defendants

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JSE DIRECT LLC,

CDS FAMILY TRUST

AMP-CDS, LLC

GARY SALMIRS
Defendant


LEWIS ROSE, ESQ.
KELLY, DRYE & WARREN LLP
Attorney for Defendants

SALLY GUSTAFSON GARRETT, ESQ.
WSBA #7638
BENEDICT GARRATT POND PLLC
Attorney for Defendants

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8 8.1 Upon entry of this Consent Decree, all claims in this matter not otherwise
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10 DONE IN OPEN COURT this ____ day of _____, 2007.

11
12 JUDGE/COURT COMMISSIONER

13
14 Approved for entry and presented by:

15 ROBERT M. MCKENNA
16 Attorney General

Approved for Entry, Notice of
Presentation Waived:

17
18 KATHERINE M. TASSI, WSBA #32908
19 Assistant Attorney General
20 Attorneys for Plaintiff
21 State of Washington


22 CONSUMER DIGITAL SERVICES, LLC
23 Defendant


24 PRIVASAFE, LLC



25 SURFSAFE INTERNET SERVICES


26 LEVERAGE-CDS, LLC

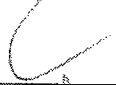
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JSE DIRECT LLC,



CDS FAMILY TRUST



AMP-CDS, LLC



GARY SALMIRS
Defendant

LEWIS ROSE, ESQ.
KELLY, DRYE & WARREN LLP
Attorney for Defendants

SALLY GUSTAFSON GARRETT, ESQ.
WSBA #7638
BENEDICT GARRATT POND PLLC
Attorney for Defendants