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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

TRILEGIANT CORPORATION; TRL GROUP, INC.; and DOES 1-20, inclusive,

Defendants.

CASE NO.: GIC850483

[PROPOSED] PERMANENT INJUNCTION AND FINAL JUDGMENT

Plaintiff, the People of the State of California (“the People” or “Plaintiff”), having filed its complaint and appearing through Bill Lockyer, Attorney General of the State of California, by Deputy Attorneys General Catherine Z. Ysrael and Benjamin Diehl, and defendants Trilegiant Corporation and TRL Group (collectively “Trilegiant” or “Defendants”), appearing individually and through their attorneys Skadden, Arps, Slate, Meagher and Flom, by Thomas Nolan and Harriet Posner, and Davis & Gilbert, by Ronald R. Urbach, Esq., having stipulated that this

[PROPOSED] PERMANENT INJUNCTION AND FINAL JUDGMENT

1 Permanent Injunction and Final Judgment (hereafter “Judgment”) may be signed by a judge,
2 commissioner or judge pro tem of the San Diego County Superior Court,

3 The parties having consented to the entry of this Judgment for the purposes of settlement
4 only, without this Judgment constituting evidence against or any admission by any party, and
5 without trial of any issue of fact or law, and without this Judgment constituting any admission of
6 liability or wrongdoing by Defendants or any other party, and with the understanding that
7 Defendants’ position is that they have at all times been in compliance with all applicable laws,
8 and with the understanding that by entering into this Agreement, Defendants do not agree or
9 concede that the claims or allegations asserted by the State have merit,

10 The parties acknowledge that, in addition to this judgment, Trilegiant has entered into
11 settlement agreements with the states of Alaska, Connecticut, Illinois, Iowa, Maine, Michigan,
12 Missouri, North Carolina, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Vermont, and
13 Washington, in the form of judgments and assurances of voluntary compliance or discontinuance
14 resolving claims with respect to Check and Non-Check Solicitations. California and the other
15 states are referred to collectively, hereafter, as the “Settling States.” This judgment, and the other
16 aforementioned settlement agreements, are referred to collectively hereafter as the “Settlement
17 Documents.”

18 The Court having considered the pleadings and the Stipulation for Entry of Final
19 Judgment and Permanent Injunction executed by the parties and filed herewith, and good cause
20 appearing,

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

23 **I. JURISDICTION**

- 24 1. The Court has jurisdiction over the subject matter of this action and of the parties.
25 2. Venue is proper in this Court.
26 3. The complaint states a cause of action against Defendants under Sections 17200
27 and 17500 of the California Business and Professions Code.

1 **II. DEFINITIONS**

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

3 **A. “Account”** means a credit card account, debit card account, checking
4 account, savings account, loan account, mortgage account or other similar account.

5 **B. “Authorized User”** means the holder of an Account or a person
6 authorized to make charges to an Account.

7 **C. “Automatic Renewal”** means a plan or arrangement under which a
8 Membership Program is automatically renewed at the end of the initial membership term,
9 and thereafter renewed continually for successive membership terms, unless the
10 consumer affirmatively cancels the membership. A “membership term” does not include
11 any portion of a trial period included in a “Trial Offer.”

12 **D. “Check Solicitation”** means any offer, sent by Mail, of a live check, the
13 cashing or depositing of which obligates a consumer to purchase or renew a membership
14 in a Membership Program, either immediately or upon the expiration of a Trial Offer,
15 unless the consumer affirmatively cancels the membership.

16 **E. “Clear and Conspicuous”** or **“Clearly and Conspicuously”** means a
17 statement that, regardless of the medium in which it is made, is readily understandable
18 and presented in such size, color, contrast, duration, and location, compared to the other
19 information with which it is presented, that it is readily apparent to the person to whom it
20 is disclosed. A statement may not contradict or be inconsistent with any other
21 information with which it is presented. If a statement is necessary to prevent other
22 information from being misleading or deceptive, then the statement must be presented in
23 proximity to that other information, in a manner that is readily noticeable, readable, and
24 understandable, and it must not be obscured in any manner.

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

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

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

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

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

13 **K. “Membership Program”** means any program offered by Trilegiant to a
14 consumer in a Settling State offering benefits, goods or services to members of the
15 program, and for which Trilegiant charges a fee or requires that the consumer provide
16 Trilegiant with some other form of consideration. This excludes one-time sales
17 transactions unless they involve Automatic Renewals or require consumers to
18 affirmatively cancel their membership in order to avoid continuing or additional charges
19 or other financial obligations.

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

1 [Membership Program] is not affiliated with [Partner]. At the end
2 of each [membership term], [Membership Program] will charge
3 your [name of Account] Account the membership fee in effect at
4 that time unless you call to cancel.”

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

8 “Accepting the enclosed offer will result in a charge of \$ [then
9 current [monthly or annual, as applicable] fee] to your [name of
10 Account] for a membership in [Membership Program] unless you
11 cancel within the Trial Offer period. To cancel, you must call
12 [toll-free number] within [length of Trial Offer period] of the date
13 you receive your Membership Fulfillment Materials. We will not
14 have to ask for [if applicable: your [name of Account] Account
15 number or] your further consent in order to charge you.

16 [Membership Program] is not affiliated with [Partner]. At the end
17 of each [membership term], [Membership Program] will charge
18 your [name of Account] Account the membership fee in effect at
19 that time unless you call to cancel.”

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

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

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

26 (c) in the main body, so long as Trilegiant includes a Clear and
27 Conspicuous notice at the bottom of the first page of the main body stating

28 [PROPOSED] PERMANENT INJUNCTION AND FINAL JUDGMENT

1 the following, or substantially similar words that have the same
2 substantive meaning and do not materially change the terms of the
3 disclosure: “Important Notice: Your [name of Account] Account will
4 automatically be charged for the membership fee if you accept this offer
5 and fail to cancel within the Trial Offer period. See [as applicable: below,
6 over, next page, page __] for details;” or

7 (d) in the main body, so long as Trilegiant includes on the first
8 page of the main body Clear and Conspicuous information regarding the
9 Membership Program, including (i) the price; (ii) that the consumer will
10 be charged if he or she does not cancel within the Trial Offer period; (iii)
11 the terms of the Automatic Renewal feature; and (iv) a statement that the
12 Membership Program is not affiliated with the Partner. Items (i) through
13 (iii) shall be disclosed in close proximity to one another, and Defendants
14 shall not use any form of any of the words specified in paragraph 6 when
15 providing this information.

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

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

20 (b) The consumer should expect in the Mail, within four to five
21 weeks of providing Express Consent, Fulfillment Materials
22 regarding the consumer’s membership in the Membership
23 Program.

24 **B.** If any Check or Non-Check Solicitation includes the use of a Trial Offer,
25 failing to disclose Clearly and Conspicuously in the Check or Non-Check Solicitation a
26 statement that the Trial Offer shall commence as of the date the consumer receives the
27 Fulfillment Materials. The date of receipt shall be deemed to be five days after the

1 Fulfillment Materials are sent by first class Mail. If the Fulfillment Materials are sent by
2 second or third class Mail, receipt shall be deemed to be nine days after such mailing.
3 Cancellations shall be honored for a period of fifteen (15) days after the end of the Trial
4 Offer period.

5 C. For Check Solicitations,

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

10 (2) Including on the face of a check offered with a Check Solicitation
11 any description of an accompanying Trial Offer as “free,” “complimentary,” or
12 “risk-free,” or similar terms or any reference to “Cash Disbursements Office” or
13 similar terms.

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

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

25 “By cashing this check I agree to a Trial Offer in
26 [Membership Program] and understand that \$ [then
27 current [monthly or annual, as applicable] fee] will

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automatically be charged to my [name of Account] Account unless I cancel my membership by calling [toll-free number] before the end of the Trial Offer period. I understand that I will also be charged every [membership period] at the then current fee and must cancel to avoid future fees and receive any applicable refund.”

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

- (1) is a refund, rebate, reward or other benefit conferred because of a business relationship between [PARTNER] and the consumer; or
- (2) is anything other than a benefit or incentive offered by Defendants for the purchase of a membership in a Membership Program.

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

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

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

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

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

(b) the consumer’s membership number in the Membership Program;

(c) the length of the Membership Period;

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

(e) that the Membership Charge has been or will automatically be billed to the Authorized User's account, and, if subject to Automatic Renewal, that the Authorized User’s Membership will be renewed and the Membership Charge will be automatically billed to the Authorized User's Account for each successive period unless the Authorized User cancels the membership;

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

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

(2) on the outside of the envelope containing the Fulfillment Materials, a statement in no less than 14 point, bold type indicating “Materials

1 For Membership You Ordered” or substantially similar words that have the same
2 substantive meaning and do not materially change the terms of the disclosure.

3 **G.** For renewal notices,

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

6 (a) for each of the consumer’s memberships that are billed less
7 frequently than quarterly a renewal notice between thirty (30) and sixty
8 (60) days prior to each renewal billing date; and

9 (b) for each of the consumer’s memberships, regardless of the
10 frequency Defendants bill Membership Charges, a renewal notice between
11 thirty (30) and sixty (60) days prior to the effective date of either any
12 increase in the Membership Charge for the Membership Program or any
13 change in the frequency of assessing the Membership Charge for the
14 Membership Program, such as a change from annual to monthly billing.
15 Renewal notices sent pursuant to this subparagraph shall include all
16 information required by paragraph 5(G)(2), below, as well as an
17 explanation of the increase in the Membership Charge or change in the
18 billing frequency.

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

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

24 (b) For consumers billed less frequently than quarterly, notice
25 of the length of the renewal period, the amount of the Membership
26 Charge; that the consumer is about to be renewed and charged for the next
27 Membership Program term unless he or she or cancels; and the deadline

1 by which a consumer must cancel in order to avoid being billed for the
2 Membership Charge; or

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

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

15 (4) Failing to include on the outside of an envelope, the front of a
16 postcard, or on the exterior of the applicable mailing piece containing an
17 Automatic Renewal notice or the notice required by subparagraph 5(G)(3), above,
18 a statement in no less than 14-point, bold type indicating “Membership Renewal
19 Notice” or substantially similar words that have the same substantive meaning
20 and do not materially change any of the terms of the disclosure.

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

23
24 **H. Failing:**

25 (1) prior to billing an Account for a Membership Charge, to first
26 obtain the Express Consent of the Authorized User and then maintain the original,
27 a copy, or an electronic copy of the Express Consent of the Authorized User in a

1 manner that ensures access to such record reasonably promptly for at least 24
2 months from the date Trilegiant obtains such Express Consent and, upon written
3 request, make such record available to the State;

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

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

12 (4) to the extent permitted by the billing practices of any applicable
13 Partner, to cease using the term "Optional Product" to describe Membership
14 Charges on mortgage or billing statements without Clearly and Conspicuously
15 disclosing on the first page of the billing statement or invoice that the Optional
16 Product is a Membership Program purchased by the consumer and without
17 providing a toll-free telephone number the consumer may call to cancel the
18 Membership Charge or receive a refund; and

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

25 **I. For Cancellations and Refunds,**

26 (1) Failing to have a cancellation policy by which Authorized Users
27 may cancel any membership in any Membership Program by providing his or her

1 membership number, or first and last name and billing address, either orally or in
2 writing;

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

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

14 (4) Failing to process any applicable refund or account credit provided
15 for under the terms of the Membership Program cancellation policy for a
16 membership cancelled by the consumer within ten (10) business days of receiving
17 the cancellation request, including failing to credit to the consumer any renewal
18 charges that have already been processed for a term that has not yet commenced,
19 provided that the consumer has provided his or her membership number, or first
20 and last name and billing address.

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

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

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

16 **J.** Making any representation in any solicitation or notice to consumers,
17 directly or by implication, that is contrary to any of the statements and disclosures
18 required by this Judgment.

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

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

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4 **IV. CONSUMER RESTITUTION**

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

8 **A.** Within one hundred eighty (180) days from the Effective Date, Trilegiant shall
9 provide the sum of Six Million Dollars (\$6,000,000) (“Fund 1”) to make full restitution to all
10 “Fund 1 Eligible Consumers” in the Settling States, including California. A Fund 1 Eligible
11 Consumer is a consumer who purchased one or more memberships in a Membership Program
12 between July 1, 2001 and the Effective Date, and has complained by no later than the Effective
13 Date that he or she did not consent to, authorize, or understand that he or she would be assessed
14 a Membership Charge or would be assessed any charge in connection with an Automatic
15 Renewal, provided that the consumer: (1) purchased the membership in the Membership
16 Program through a Check or Non-Check Solicitation; (2) has not used the benefits of the
17 Membership Program for which he or she purchased a membership; and (3) resided in one of the
18 Settling States at the time he or she submitted the complaint. To be eligible for restitution, the
19 consumer must have either: (1) sent his or her complaint to Defendants by Mail or by e-mail
20 received by Defendants and submitted through the “General Inquiries” or “Comments Form”
21 sections of the <http://www.trilegiant.com/> internet web site (or any internet sites or addresses
22 which may replace or supersede either of those sections or, if applicable, that web site) on or
23 before the Effective Date or (2) sent his or her written complaint in any format to Plaintiff, one
24 of the other Settling States, or one of Defendants’ Partners by the Effective Date and the
25 complaint must have been forwarded by the entity that received it to Defendants by no later than
26 60 days after the Effective Date. Full restitution paid pursuant to this subparagraph shall consist
27 of all membership fees paid by the Fund 1 Eligible Consumer after July 1, 2001, less any refunds

1 previously paid or provided by Defendants. Any amount of Fund 1 not distributed pursuant to
2 this subparagraph shall be added to the sum available for distribution pursuant to subparagraph
3 8(B), below.

4 **B.** Except as provided in this subparagraph, within one year after the Effective Date,
5 Trilegiant shall provide the additional sum of Two Million Three Hundred Twenty-Five
6 Thousand Dollars (\$2,325,000) (“Fund 2”) to “Fund 2 Eligible Consumers” in the Settling
7 States, including California. A Fund 2 Eligible Consumer is a consumer who purchased one or
8 more memberships in a Membership Program between July 1, 2001 and ninety days after the
9 Effective Date but is not a Fund 1 Eligible Consumer, and who, no later than two hundred
10 seventy (270) days after the Effective Date, complains that he or she did not consent to,
11 authorize, or understand that he or she would be assessed a Membership Charge or would be
12 assessed any charge in connection with an Automatic Renewal, provided that the consumer: (1)
13 purchased the membership in the Membership Program through a Check or Non-Check
14 Solicitation; (2) has not used the benefits of the Membership Program for which he or she
15 purchased a membership; and (3) resided in one of the Settling States at the time he or she
16 submitted the complaint. To be eligible for restitution, the consumer must have either: (1) sent
17 his or her complaint to Defendants by Mail or by e-mail received by Defendants and submitted
18 through the “General Inquiries” or “Comments Form” sections of the <http://www.trilegiant.com/>
19 internet web site (or any internet sites or addresses which may replace or supersede either of
20 those sections or, if applicable, that web site) on or before 270 days after the Effective Date or
21 (2) sent his or her written complaint in any format to Plaintiff, one of the other Settling States, or
22 one of Defendants' Partners, provided that the complaint is forwarded by the entity that receives
23 it to Defendants by no later than 270 days after the Effective Date. Full restitution paid pursuant
24 to this subparagraph shall consist of all membership fees paid by the Fund 2 Eligible Consumer
25 after July 1, 2001, less any refunds previously paid or provided by Defendants. In the event that
26 Two Million Three Hundred Twenty-Five Thousand Dollars (\$2,325,000) plus any amount of
27 Fund 1 made available for distribution under the terms of this subparagraph is not sufficient to

1 provide full restitution to all consumers eligible to receive restitution pursuant to this
2 subparagraph, then restitution shall be distributed to Fund 2 Eligible Consumers on a pro rata
3 basis. In the event that the total payment due to consumers eligible to receive restitution
4 pursuant to this subparagraph is less than Two Million Three Hundred Twenty-Five Thousand
5 Dollars (\$2,325,000) plus any amount of Fund 1 made available for distribution under the terms
6 of this subparagraph, then the difference shall be paid to the Settling States, excluding Ohio, no
7 later than one year after the Effective Date as an additional sum paid to the Settling States in
8 accordance with and for the purposes stated in paragraph 9 below. California shall receive
9 13.48996 per cent (13.48996%) of any such remainder.

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

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

18 **V. PAYMENT TO THE STATE**

19 **9.** Within three (3) business days after the Effective Date, Defendants shall pay, by
20 wire transfer or as otherwise directed by the Settling States, the sum agreed to by the Settling
21 States, as payment for attorneys fees and investigation and litigation costs, and/or consumer
22 protection enforcement funds, consumer education, litigation or local consumer aid, and other
23 uses permitted by state law, at the discretion of each state's Attorney General. Pursuant to this
24 paragraph, Defendants shall pay \$572,539 to Plaintiff. Defendants are ordered to pay
25 \$229,015.60 of this sum pursuant to Section 17206 of the Business and Professions Code. The
26 remaining \$343,523.40 shall be used to compensate the California Attorney General's Office for
27 its attorney fees, investigation fees, and other costs related to the resolution of this matter, or

1 may be used to fund consumer fraud investigations, enforcement operations, or litigation, all at
2 the discretion of the Office of the California Attorney General.

3 **VI. OTHER SETTLEMENT TERMS AND OBLIGATIONS**

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

7 **11.** Nothing in this Judgment shall be construed as:

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

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

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

25 **12.** Nothing herein shall be construed as an admission by Defendants of any of the
26 allegations raised by Plaintiff, any matter of fact or law, any violation of any law, or any other
27 liability or wrongdoing.

1 inconsistent provision of the statute or regulation with which Defendants intend to comply and of
2 the counterpart provision of this Judgment that Defendants contend is in conflict with the statute
3 or regulation. If the Attorney General disagrees, he or she shall within 30 days of receipt of
4 Defendant's notice notify Defendants that the Attorney General does not agree there is a conflict
5 between the requirements of the Judgment and the newly enacted state or federal law. If
6 Defendants disagree with Attorney General's contention that there is no conflict, Defendants
7 shall comply with the terms of the Judgment until such time as Defendants obtain a court order
8 modifying the Judgment. Any contention by Defendants that a provision of this Judgment
9 conflicts with a judgment in an action brought by Plaintiff against, or any agreement between
10 Plaintiff and, one or more of Defendants' Partners shall also be resolved pursuant to the
11 provisions of this paragraph.

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

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

16 President
17 Trilegiant Corporation
18 100 Connecticut Avenue
19 Norwalk, Connecticut 06850

20 with a copy to:
21 General Counsel
22 Trilegiant Corporation
23 100 Connecticut Avenue
24 Norwalk, Connecticut 06850

25 Ronald R. Urbach
26 Davis & Gilbert LLP
27 1740 Broadway
28 20th Floor
New York, New York 10019

B. If to the State:

Benjamin G. Diehl, Esq.
Deputy Attorney General
300 S. Spring St.
Los Angeles, CA 90013

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

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

11 **20.** The Clerk is ordered to enter this Judgment forthwith.

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

15 Date: August , 2006.

16
17 BY THE COURT

18
19 _____
20 Judge