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JOHN J. HOFFMAN, Acting Attorney  
General of the State of New Jersey, and  
STEVE C. LEE, Acting Director of the New  
Jersey Division of Consumer Affairs,

Plaintiffs,

v.

CLASSMATES, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, MERCER COUNTY  
DOCKET NO.: MER-C-\_\_\_\_-15

Civil Action

**FINAL CONSENT JUDGMENT**

Plaintiffs, John J. Hoffman, Acting Attorney General of the State of New Jersey (“Attorney General”), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs (“Director”) (collectively “Plaintiffs”) have filed a Complaint for a permanent injunction and other relief in this matter pursuant to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”) and the Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq. (“Advertising Regulations”) alleging the Defendant, Classmates, Inc. (hereinafter referred to as “Defendant”), committed violations of the CFA and/or Advertising Regulations in the offer and/or sale of consumer goods and consumer services.

Plaintiffs, by its counsel, and the Defendant, by its counsel, have agreed to the entry of this Final Consent Judgment (“Consent Judgment”) by this Court without trial or adjudication of any issue of fact or law, and without admission of any wrongdoing or admission of any of the violations of the CFA, Advertising Regulations or any other law as alleged by Plaintiffs.

Plaintiffs have brought this action to conclude a multi-state investigation of the Defendant conducted by the Attorneys General of Alabama, Alaska, Delaware, Florida, Idaho, Illinois, Kansas, Maryland, Maine, Michigan, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Washington and Wisconsin (hereinafter collectively referred to as the “Attorneys General”). Contemporaneous with this Consent Judgment, the Defendant is entering into similar agreements with each of the Attorneys General of the States.

### PARTIES

1. Plaintiffs are the Attorney General and the Director. The Attorney General is charged with the responsibility of enforcing the CFA and the Advertising Regulations. The Director is charged with the responsibility of administering the CFA and the Advertising Regulations on behalf of the Attorney General.

2. Defendant Classmates, Inc. is a Washington corporation located at 1501 Fourth Avenue, Suite 400, Seattle, WA 98101. Defendant does business as Classmates.com and operates the Classmates social networking website that is available to New Jersey consumers.

### DEFINITIONS

3. “**Account Information**” means any information, encrypted or not, that would enable the Defendant, or a third party acting on the Defendant’s behalf, to cause a charge to be

placed against a consumer's account, whether credit, debit, or any other kind of account or method of billing. Account Information includes, but is not limited to, any credit or debit card account numbers, credit or debit card type, expiration date, security code and other information or data used strictly for the purpose of billing a Consumer.

4. **“Clearly and Conspicuously”** and **“Clear and Conspicuous,”** when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, understandable, and capable of being heard. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is likely to be noticed, readable, and understandable, and it must not be obscured in any manner. Audio disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Visual disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a consumer to read and comprehend it. In a print advertisement or promotional material, including, but without limitation, point of sale display or brochure materials directed to consumers, the disclosures shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears.

5. **“Consumer”** shall refer to any Person defined in accordance with N.J.S.A. 56:8-1(d).

6. **“CFA”** shall be the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and any future amendments thereto.

7. **“Effective Date”** shall mean the date on which this Consent Judgment is entered by the Court.

8. **“Free-to-Pay Conversion”** means an offer or agreement to sell or provide any goods or services to a Consumer for a free trial period after which the Consumer will be billed a fee if the Consumer does not reject the offer or cancel the agreement.

9. **“Marketing Partner(s)”** means any person or entity that the Defendant has authorized to offer, promote, advertise or sell any Membership Program to the Defendant’s Consumer customers.

10. **“Membership Program(s)”** means any program, product, or service offered by a third party that includes recurring charges following a Free-to-Pay Conversion; provided, however, as used in this Consent Judgment, a “Membership Program” shall not include, without limitation, a program, product, or service marketed through a banner ad.

11. **“Personal Information”** means an individual’s first name or first initial and last name in combination with the individual’s billing address, Social Security number, driver’s license number, financial or credit account numbers or Individual Taxpayer Identification number. For purposes of this Consent Judgment, Personal Information shall include Account Information.

12. **“Subscription Services”** shall refer to the Defendant’s paid memberships or subscriptions that the Defendant offered to consumers on its online nostalgia media content and services website.

## PLAINTIFFS' ALLEGATIONS

13. The Defendant engages and has engaged in the business of offering and selling consumer goods and consumer services to New Jersey Consumers via the Internet through websites controlled by the Defendant. The consumer goods and consumer services that the Defendant offers and sells include Subscription Services.

14. Consumers enroll in Defendant's Subscription Services by agreeing to pay a subscription fee and enrolling for an initial or trial term of three months, one year or two years. In most cases, at the conclusion of the initial or trial term, unless the Consumer has elected to cancel or previously has set his/her renewal option to "Manual" mode, his/her subscription renews automatically and the credit or debit card that the consumer used to first enroll in the Subscription Service(s) is automatically charged the then-current full price for the renewal. The Defendant does not adequately disclose to Consumers at the time they purchase the Subscription Services that the Subscription Services automatically renew.

15. Between 2003 and 2010, the Defendant entered into a number of post-transaction marketing agreements (hereinafter "marketing agreement(s)") with Marketing Partners. The Defendant's Marketing Partners included Affinion Group, Trilegiant Corporation, Webloyalty, Inc., Vertrue, Inc. and Jackpot Rewards, Inc.

16. Pursuant to the Defendant's marketing agreements with its Marketing Partners referenced in the previous paragraph, the Defendant agreed to display advertisements for Membership Programs on the Defendant's website. Some of the advertisements were published to Consumers in the course of their transactions with the Defendant. In most cases, the

advertisements were published immediately following the Consumers' transactions with the Defendant.

17. The Defendant earned revenue from these marketing agreements based on the number of Marketing Partner offers viewed by Consumers on the Defendant's website, commonly referred to in the marketing agreements as "impressions," and/or the number of times a Consumer accepted a Marketing Partner's offer, commonly referred to in the marketing agreements as a "conversion."

18. The advertisements offered various Membership Programs, such as discount clubs, travel rewards programs, and insurance-type products. These Membership Programs typically offered an initial free-trial period, with a Free-to-Pay Conversion that resulted in a large number of Consumers complaining to the Attorneys General that they were unwittingly billed for Membership Programs until they cancelled the Membership Programs.

19. In some instances, the advertisements were presented to Consumers with the Defendant's logo while they were in the process of completing their transactions with Defendant. This gave some Consumers the impression that they were still conducting business with Defendant (as opposed to one of the Defendant's Marketing Partners). The advertisements failed to adequately identify the Marketing Partner as the business making the offer. Consequently, some Consumers were not aware that the offer was coming from one of the Defendant's Marketing Partners and not from Defendant.

20. In some instances, Consumers were encouraged to respond to the Marketing Partners' offers by clicking a "Continue" or "Yes" button in order to claim a discount or cash back reward on the Consumer's purchase with Defendant or some other retailer, making the

advertisement appear as if it were presented by Defendant instead of a Marketing Partner. The Defendant did not adequately inform Consumers that by clicking on these buttons, they were being directed to an entirely different website hosted by a Marketing Partner.

21. A method used for a period to enroll Consumers into Membership Programs involved the Marketing Partners' use of false consumer surveys. For example, at the conclusion of some of the Defendant's transactions, Consumers were informed, "Congratulations, you are now a Classmates Gold Member! Please complete your survey and claim your reward." The purpose of the survey was to lead Consumers to accept an offer to enroll in a Membership Program when they submitted the survey response. In fact, neither the Marketing Partners nor the Defendant used the data generated from the surveys, and one of the Defendant's Marketing Partners confirmed that the sole purpose of the surveys was to increase conversion rates.

22. In other instances, Consumers needed only to enter their email addresses or check a box in order to accept the Marketing Partner's offer, unaware due to inadequate disclosure that, by doing so, they were agreeing to enroll in a Membership Program.

23. Defendant had authority, pursuant to its marketing agreements with each Marketing Partner, to review, revise and/or refuse to display any Marketing Partner's offer or advertisement.

24. As a result of the above-described practices, at times as much as 89% of the Consumers who enrolled in Membership Programs did so without knowing they were agreeing to enroll in a Membership Program that would cost them money which they did not intend to spend. Many Consumers never availed themselves of the Membership Programs' purported benefits.

25. In order to facilitate the Marketing Partners' billing practices, the Defendant, without adequately obtaining permission from Consumers, electronically passed Consumers' credit or debit card account information to its Marketing Partners when the Consumers enrolled in a Membership Program.

26. The Defendant's privacy policies were misleading, inconsistent and/or failed to adequately inform Consumers that the Defendant shared Consumers' Personal Information with third parties, including Defendant's Marketing Partners, when Consumers enrolled in a Membership Program.

#### **DEFENDANT'S DENIALS**

27. Defendant denies any and all allegations made by Plaintiffs that it has engaged in wrongdoing of any kind. Defendant is confident that if any of the alleged misconduct were to be litigated, Defendant would prevail on each and every claim asserted by Plaintiffs. However, to avoid the substantial burden and expense on Defendant that would result from continued investigation into these issues or litigation, Defendant has elected to resolve this matter through a consensual resolution. More specifically, Defendant makes the following denials:

28. Prior to the time that consumers enroll in Defendant's Subscription Services program, Defendant fully discloses to Consumers in a clear and conspicuous manner that the Subscription Services will automatically renew until they cancel, what their credit or debit card will be charged at renewal, and where they can change their renewal status. Such disclosures are in full compliance with all applicable laws.

29. With respect to Membership Programs offered to Defendant's customers by its former Marketing Partners, Defendant sought to ensure that Membership Program offers made to



Consumers complied with governing law by adopting a three-tier approach: (a) negotiation of contractual terms that required the Marketing Partners to make clear and conspicuous disclosures in the Membership Program offers; (b) review of the Membership Program offers to ensure that the disclosures were clear and conspicuous; and (c) follow-up on Consumer complaints received by Defendant to ensure that the Marketing Partners provided appropriate refunds to dissatisfied customer. As a result of this three-tier approach, the Membership Program offers made to Consumers were clear and conspicuous as a matter of law, in that they clearly delineated the party making the offer, described all of the salient terms and conditions of the offer, and obtained acceptance of the offer from customers with unambiguous language located in immediate proximity to the “Yes” or similar button that the action of clicking the button authorized Defendant to provide certain Personal Information to the Marketing Partners in order to complete their transaction. Under no circumstances did Defendant ever share a Consumer’s Personal Information with a third party without first receiving that Consumer’s informed consent. In addition to these clear and conspicuous disclosures, a number of Defendant’s Marketing Partners reminded Consumers via e-mail, prior to being charged, that they would soon be charged for their participation in the Membership Programs and provided dissatisfied consumers with refunds. As of January 2010, Defendant had voluntarily terminated all of its contracts with its Marketing Partners.

#### APPLICATION

30. The provisions of this Consent Judgment apply to the Defendant and its agents, successors, assignees, merged or acquired entities, controlled affiliates, controlled subsidiaries or divisions, and parent or controlling entities, over which the Plaintiffs have jurisdiction.

31. The provisions of this Consent Judgment shall apply to the Defendant in connection with the offer and/or sale of Membership Programs and/or Subscription Services to New Jersey Consumers; provided, however, that in the case of the offer and/or sale of Membership Programs, the provisions of this Consent Judgment shall only apply when a Membership Program is marketed during or immediately following the Consumer's transaction with Defendant.

### INJUNCTION

32. The Defendant shall not engage in any act or practice in violation of the CFA and/or Advertising Regulations in connection with any offer of any Membership Program and/or Subscription Services.

33. The Defendant shall not engage in any act or practice that violates the Restore Online Shoppers' Confidence Act, 15 U.S.C. §8401, et seq.

34. The Defendant shall not make any express or implied misrepresentations that have the capacity, tendency or effect of deceiving or misleading Consumers in connection with the offer or sale of any Membership Program or Subscription Services.

35. The Defendant shall inform Consumers of any material facts, the omission of which would deceive or tend to deceive Consumers, in connection with the offer or sale of any Subscription Services.

36. The Defendant shall not transfer Consumers' Personal Information to any third party unless it is lawful to do so, and, prior to obtaining the Consumers' Personal Information, the Defendant Clearly and Conspicuously discloses its privacy practices and/or policies, including whether and to what extent the Defendant shares Consumers' Personal Information

with third parties. Nothing contained in this paragraph shall alter or modify the requirements of paragraph 41.

37. The Defendant shall not make any false, misleading, deceptive, or conflicting statements to Consumers regarding Defendant's privacy practices and/or policies. Defendant shall ensure any privacy policy displayed, or otherwise made available, to Consumers on its website is consistent with the Defendant's practices regarding its handling of Consumers' Personal Information.

38. The Defendant shall not use the phrase "risk-free" in connection with any Membership Program or Subscription Service that has, in effect, a negative option requiring the Consumer to opt-out or cancel the service in order not to be billed or charged for any Membership Program or Subscription Services.

39. The Defendant shall comply with the Federal Trade Commission ("FTC") Guide Concerning Use of the Word "Free" and Similar Representations, 16 C.F.R. § 251.1 and any amendments thereto in connection with the offer of any Membership Program or Subscription Services.

40. The Defendant shall not misrepresent the reason or purpose for which a Consumer is receiving any offer or advertisement for a Membership Program.

41. The Defendant shall not transfer, release or otherwise share Consumers' Account Information to a Marketing Partner unless it is lawful to do so.

42. The Defendant shall not misrepresent its relationship with any Marketing Partner.

43. The Defendant shall not allow any Marketing Partner to include any of the Defendant's corporate or trade names or logos in any advertisement or offer for a Membership

Program in a manner that misrepresents or obscures the identity of either the Defendant or the Marketing Partner offering the Membership Program including, but not limited to, the use of any of the Defendant's corporate or trade name or logo in the title of a Membership Program.

44. The Defendant shall not permit its Marketing Partners to offer any goods or services to the Defendant's Consumers until after Consumers have completed their transactions with the Defendant, including (i) the Consumer's acceptance of all charges for the goods and/or services purchased from Defendant and (ii) the presentation, if any, by Defendant to the Consumer of a confirmation page with respect to the order immediately following the Consumer's transaction with Defendant.

45. The Defendant shall, when directing a Consumer from one of its websites to any website operated by a Marketing Partner, Clearly and Conspicuously disclose, in a manner that is separate and apart from the Consumer's transaction with the Defendant: (i) the Consumer is leaving the Defendant's website; (ii) the Consumer is about to enter the unaffiliated Marketing Partner's website for the purpose of receiving an offer from the Marketing Partner; and (iii) the Consumer is advised to read the Marketing Partner's Terms of Service and Privacy Policy. In addition, the Consumer will be required to take some affirmative action to acknowledge and proceed past the disclosures required by this paragraph, for example by clicking an "OK" button.

46. The Defendant shall include in all contracts with its Marketing Partners a requirement that the Marketing Partners represent that they are in compliance with all applicable laws and regulations relating to the offer of Membership Programs, including the Restore Online Shoppers' Confidence Act ("ROSCA"), 15 U.S.C. §8401, et seq.

47. The Defendant shall not misrepresent the reason for requesting a Consumer's Account Information.

48. The Defendant shall include in all contracts with its Marketing Partners the requirement that the Marketing Partners Clearly and Conspicuously disclose to the Consumer the material terms and conditions of any Membership Program prior to the Consumer agreeing to enroll in any Membership Program.

49. The Defendant shall include in all contracts with its Marketing Partners a clause permitting Defendant to terminate its relationship with a Marketing Partner that offers or sells a Membership Program in a manner that fails to comply with ROSCA, any other applicable law or regulation relating to the offer of Membership Programs, or the Marketing Partner's contractual obligations under paragraph 48 of this Consent Judgment.

50. In the event that the Defendant receives a request to cancel a Membership Program from a Consumer, or on a Consumer's behalf, the Defendant shall: (i) promptly transmit to its Marketing Partners the Consumer's cancellation request; and (ii) provide the cancelling Consumer with the name of the Marketing Partner offering the Membership Program, including the Marketing Partner's mailing address, e-mail address, toll-free telephone number, and web address, if available.

51. The Defendant shall promptly request its Marketing Partners to give prompt and full refunds to any Consumer upon request by the Consumer, or upon receipt of any complaint, if the Consumer indicates he/she did not consent to enrollment in a Membership Program or otherwise did not accept the Membership Program offer, regardless of whether the Defendant

receives the Consumer's request or complaint directly from the Consumer or from an Attorney General, another government agency, or the Better Business Bureau.

52. The Defendant shall not offer Subscription Services to Consumers that automatically renew unless the terms and conditions for renewal and cancellation are Clearly and Conspicuously disclosed to Consumers prior to the purchase of the Subscription Services. For purposes of this paragraph, in addition to the requirements of paragraph 4, these terms and conditions shall be in direct proximity to the space provided for entry of the Consumer's Account Information and shall disclose, without limitation:

(a) that the Subscription Service is continuous and the Consumer will continue to be billed unless he/she cancels;

(b) the duration and price of the initial term and any renewal term of the Subscription Service; and

(c) information regarding how the Consumer can change his or her account renewal status to avoid being automatically billed.

53. No later than sixty (60) days after the Effective Date, the Defendant shall provide written or electronic (e.g., email) notices to Consumers who purchase Subscription Services having an initial subscription term of at least twelve (12) months and that automatically renews for more than a one month term, informing the Consumers that their subscriptions will automatically renew if not cancelled. The notice required by this paragraph shall advise those Consumers that, unless they take action to cancel their Subscription Services, the Subscription Services will automatically renew, and the Defendant shall provide a reasonably simple and effective procedure through which Consumers may use the Defendant's website to opt out of the

automatic renewal. Every year, for a period of five years from the Effective Date of this Consent Judgment, the Defendant shall provide the notice required by this paragraph to all applicable Consumer subscribers at least thirty (30) days but no more than sixty (60) days prior to the renewal date for that Consumer's subscription.

54. The Defendant shall promptly accept any request to cancel any Subscription Services received from a Consumer, provided the request contains sufficient information for Defendant to process the cancellation, regardless of whether the Defendant receives the Consumer's request directly from the Consumer or from an Attorney General, another government agency, or the Better Business Bureau. Nothing contained in this paragraph shall prevent Defendant from responding to the Consumer's request to cancel with an offer designed to retain or "save" the Consumer's subscription; provided, if at any time following Defendant's retention efforts, the Consumer expressly requests to have his or her Subscription Service cancelled, then Defendant shall promptly accept and process the cancellation.

55. If a Consumer disputes the renewal of his/her Subscription Services and the Defendant determines that, due to a system error or other reason within its control, the Defendant failed to send an automatic renewal notice that complies with the provisions of paragraph 53, the Consumer shall be entitled to a refund of all payments he/she made to the Defendant subsequent to the automatic renewal of their Subscription Services.

56. The Defendant, within thirty (30) days of receiving any request for a refund from a Consumer, shall make its initial determination whether a refund is appropriate and, if so, shall give a prompt and full refund to that Consumer.