BILL LOCKYER
Attorney General of the State of California
HERSCHEL T. ELKINS,
Special Assistant Attorney General
ALBERT NORMAN SHELDEN
Senior Assistant Attorney General
DAVID M. TIEDE
Deputy Attorney General
State Bar No. 167008
110 West "A" Street, Suite 1100
San Diego, California 92101
P.O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 645-2093
Fax: (619) 645-2012
Attorneys for The People of the State of California

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

In the Matter of the Agreed Case: **THE PEOPLE OF THE STATE OF CALIFORNIA,** **and** **YP CORP., d/b/a YP.COM, YP.NET, and YELLOW-PAGE.NET, A Nevada Corporation, and TELCO BILLING, INC., a Nevada Corporation,**	No. **AGREED STATEMENT OF FACTS AND JOINT AFFIDAVIT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1138, ET SEQ.**

The People of the State of California (hereinafter "People") are represented by Bill Lockyer, Attorney General of the State of California, by and through Herschel T. Elkins, Special Assistant Attorney General and David M. Tiede, Deputy Attorney General. YP Corp., d/b/a YP.com, YP.net, and Yellow-Page.net, A Nevada Corporation, and Telco Billing, Inc., a Nevada Corporation, (YP Corp. and Telco Billing, Inc. are hereinafter collectively referred to as "YP") are represented by Perkins Coie LLP, by and through Katherine M. Dugdale.

The People of the State of California and YP have a question in difference which might be the subject of a civil action. Said Parties have agreed to submit to this honorable Court for determination and judgment pursuant to section 1138, et seq., of the Code of Civil Procedure.

For the limited purpose of this action alone, and for no other purpose whatsoever, the parties agree, and as indicated, disagree, as follows:

1. The Attorney General, representing the People, is charged with the responsibility of enforcing the laws of the State of California, and is particularly charged with the responsibility of enforcing Business and Professions Code sections 17200 et seq. (which prohibit the use of unfair, unlawful or deceptive practices) and 17500 et seq. (which prohibit the use of untrue or misleading representations when attempting to sell or dispose of goods or services).

2. YP Corp., a Nevada corporation doing business within the State of California, operates an Internet yellow pages website and sells Internet Advertising Packages which provide an enhanced listing on its yellow pages website. YP Corp. transacts business in the State of California, and in the county of San Diego, under the names YP.com, YP.net, Yellow-Page.net, and through its wholly-owned subsidiary, Telco Billing, Inc., a Nevada corporation (YP Corp. and Telco Billing, Inc. are hereinafter collectively referred to as "YP")

3. YP's on-line yellow pages contain standard business listings which set forth business and organization names, addresses and telephone numbers YP has purchased or procured from various other sources. In addition to those standard business listings, YP's on-line yellow pages contain enhanced listings which reflect YP's Internet Advertising Packages or "IAP's." These enhanced listings purport to provide a preferred status for the listing and link that listing to a Mini-Web Page which may contain additional information about the business or organization. The IAP is YP's principal product or service, and sales of IAP's constitute YP's principal source of revenue.

4. Since at least January, 2003, and continuing to October, 2006, YP's principal method of advertising IAP's has been through direct mail, which method has accounted for a majority of the sales of IAP's during that period and, thus, a majority of YP's revenues.

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5. YP adopted as its direct mail marketing program the use of an "activation check," typically in the amount of $3.25 or $3.50, which is an unsolicited "live" or negotiable check made payable to the prospective customer that, upon being deposited by that prospective customer, activates the customer's account and is treated by YP as that customer's agreement to purchase an IAP and related services from YP.

6. On the back of the check is a pre-printed statement above the endorsement line which reveals that by depositing the check the prospective customer agrees to pay a monthly fee to YP and that this fee will likely be collected through the customer's local telephone bill or the bank account into which the "activation check" has been deposited. Also contained within the solicitation envelope is information relating to the IAP and the "terms of service" if a prospective customer were to order the services. YP used this solicitation method and practice since at least January 1, 2003, and until October, 2006.

7. YP has mailed many of its "activation checks" each year to businesses and organizations across the country, including to businesses within the State of California and the County of San Diego.

8. YP has, for several years, billed for monthly charges primarily through Local Exchange Carriers (the customer's local telephone company's bill) also referred to as "LEC" billing. YP's charges appear in various formats in the customer's telephone bill, reflecting an additional miscellaneous charge on their bill. After the customer pays their telephone bill to the LEC, the billed amount is then remitted by the LEC to an aggregator and then to YP, subject to various fees, reserves, and hold-backs.

9. More recently, YP has been using a second billing channel which presents its monthly charges directly to the customer's bank account (the account into which the customer had originally deposited the "activation check"). Working through automated clearing houses, YP presents recurring direct bank account withdrawals to those bank accounts, also referred to as the "ACH" billing channel. YP's charges appear in various formats on the customers' bank accounts statements, reflecting that the customer's bank has paid the monthly fee which was presented to that account by the third party ACH processor. The ACH processor receives

payment from the customer's bank and then remits the payment to YP, subject to various fees, reserves, and hold-backs.

10. The question in difference submitted for determination by the Court is as follows:

(a) The People assert that following the deposit of the "activation check", YP posted an enhanced listing (the IAP) in their on-line yellow pages by creating a Mini-WebPage for the business or other organization that deposited the check and began the billing process for collecting monthly charges for their IAP advertising services through one of several billing channels.

(b) The People assert that some businesses and some non-profit organizations, including churches, within the State of California were unaware or remain unaware that they deposited an "activation check" which resulted in an obligation towards YP, were unaware that there was an automatic withdrawal from the checking account for YP services or that YP, through an aggregator, was charging the business or organization through its telephone bill; some businesses or organizations deposited such an "activation check" by mistake or error and in the absence of any deliberate decision to purchase any of YP's advertising services.

(c) The People assert that some recipients of YP's solicitation that have deposited the "activation check" did not notice and therefore were not aware of the content of the statement placed on the back of the "activation check" or the other information enclosed in the mailing; some recipients assumed the "activation check" related to some other business, such as an existing advertising purchase with a local yellow pages publisher.

(d) The People assert that some of above-referenced businesses or other organizations which deposited YP's "activation checks" without knowing or intending to purchase YP's IAP services, paid monthly charges to YP through LEC or ACH billing channels for various periods of time, although unaware of the inclusion of those charges in their local telephone bill or the debiting of those

charges from their bank accounts.

(e) The People assert that the methods described above have been used deceptively and unfairly and in violation of Business and Profession Code sections 17200 and 17500, to cause businesses and non-profit organizations to become obligated to YP and to pay YP for advertising services they neither want nor realize they have purchased.

(f) YP asserts that it has utilized "activation checks" to encourage potential customers to read and consider their solicitation, and that in its solicitations it has fully and fairly disclosed the obligations of each potential customer should that customer choose to purchase its services.

(g) YP asserts that before billing a customer that has deposited the activation check, YP has routinely contacted the customer to discuss the customer's enhanced billing or other services.

(h) YP asserts that to assure that customers understand the agreement with it, YP has given its customers 120 days to cancel the yellow page advertising contract and obtain refunds of the amount already paid.

(i) YP asserts that none of YP's acts or practices is, or has been, in violation of Business and Professions Code sections 17200 or 17500.

11. Under the circumstances, and in view of the differences in beliefs, the People and YP are willing to consent to the entry of a judgment as set forth in a document entitled "Final Judgment Pursuant to Agreed Case," a copy of which is attached hereto as Exhibit A and which is incorporated herein by reference. The parties submit for the Court's final determination the issue of whether the proposed judgment is a fair, just and reasonable disposition of the question in difference.

The People and YP each verify and declare, under penalties of perjury, that the controversy is real and that this proceeding is brought in good faith to determine the rights of the parties.

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DECLARATION OF DAVID M. TIEDE

I, David M. Tiede, declare that I am a Deputy Attorney General for the State of California and am one of the attorneys for the People of the State of California in the above captioned matter. I further declare that the controversy set forth in the Agreed Case is real and that these proceedings are brought in good faith to determine the rights of the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____, 2006, at San Diego, California

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DAVID M. TIEDE

DECLARATION OF KATHERINE M. DUGDALE

I, [Local Counsel], declare that I am an attorney duly licensed to practice law in the State of California and represent YP in the above captioned matter. I further declare that the controversy set forth in the Agreed Case is real and that these proceedings are brought in good faith to determine the rights of the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ day of _____, 2006, at Santa Monica, California.

_____
Katherine M. Dugdale
Perkins Coie LLP
16020-26th Street, 6th Floor
Santa Monica, CA 90404