

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

STATE OF NORTH DAKOTA EX REL.  
WAYNE STENEHJEM,  
ATTORNEY GENERAL,

Civil No. 08-2016-CV-03285

Plaintiff,

**JUDGMENT**

-vs-

RUBY CORP, RUBY LIFE, INC., also  
doing business as  
ASHLEYMADISON.COM, and ADL  
MEDIA, INC.,

Defendants.

CPAT 150261.001

i. This action having been presented to the Court on stipulation between the Parties in the form of a Consent Judgment and Order, and the Court having reviewed the Parties' stipulation and having ordered that Judgment be entered as agreed by the Parties; and.

ii. NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

**IV. PARTIES**

1. Plaintiff is acting through the Consumer Protection and Antitrust Division of the Attorney General with its office located at 1050 E. Interstate Ave., Ste. 200, Bismarck, ND 58503-5574.

2. Defendant ruby is a privately-held corporation with its principal place of business at 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8. ruby has acted as a

holding company for a number of entities that operate dating websites. ruby transacts or has transacted business in this State and throughout the United States.

3. Defendant ruby Life is a Canadian corporation with its principal place of business at 20 Eglinton Avenue West, Toronto, Ontario M4R 1K8. At all times material to this Complaint, ruby Life has owned and operated the Ashley Madison website. ruby Life transacts or has transacted business in this state.

4. Defendant ADL Media is a Delaware corporation with its principal place of business at 1209 Orange Street, Wilmington, Delaware 19801. At all times material to this Complaint, ADL Media has collected AshleyMadison.com's U.S. revenue from various payment processors. ADL Media transacts or has transacted business in this district and throughout the United States.

#### **V. COORDINATION WITH OTHER ACTIONS BY OTHER STATE ATTORNEYS GENERAL**

5. The Parties acknowledge the States<sup>1</sup> of Alaska, Arkansas, Hawaii, Louisiana, Maryland, Mississippi, North Dakota, Nebraska, Nevada, New York, Oregon, Rhode Island, Tennessee, Vermont, the District of Columbia (the "Multistate") and the Federal Trade Commission are simultaneously seeking judicial approval of similar Judgments and Orders. The Parties intend to coordinate implementation of the terms of this Order with those referenced above.

#### **VI. DEFINITIONS**

For purposes of this Order, the following definitions apply:

6. The "Effective Date" for purposes of monetary provisions contained in

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1. References to "states," "States," and "Multistate" in this document include the District of Columbia.

section VI of this Order shall be the last date on which each of the Orders sought by the Multistate and the Federal Trade Commission have been approved and entered. The Effective Date for the balance of the provisions contained in this Order shall be the date on which the date that this Order is filed with the District Court of Burleigh County, North Dakota.

7. **“Engager profile”** means an employee or agent-generated account that is not an account used by an actual customer.

8. **“Personal information”** means individually identifiable information from or about an individual consumer, including, but not limited to: (1) first and last name; (2) home or other physical address, including street name and name of city or town; (3) email address or other online contact information, such as an instant messaging user identifier or a screen name; (4) telephone number; (5) date of birth; (6) government-issued identification number, such as a driver’s license, military identification, passport, or Social Security number, or other personal identification number; (7) payment card account numbers; (8) photographs of the consumer; and (9) sexual preferences.

9. **“Seal”** means any trademark, logo, seal of approval, emblem, shield, or other insignia offered for placement on Defendants’ websites and mobile applications.

## VII. ENJOINED CONDUCT

Pursuant to N.D.C.C. § 51-15-07, Defendants are hereby enjoined as follows:

### A. **PROHIBITION AGAINST MISREPRESENTATIONS**

10. Defendants, and Defendants’ officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, are permanently restrained and enjoined from misrepresenting, expressly or by implication, to North

Dakota users of their online dating sites and mobile applications:

(a) the extent to which Defendants collect, use, or maintain personal information, or protect the privacy, confidentiality, security, or integrity of personal information, including the extent to which consumers may exercise control over the collection, use, or disclosure of personal information;

(b) the extent to which Defendants use or display engager profiles;

(c) whether the profiles that appear on Defendants' dating websites or mobile applications were created by Defendants;

(d) the number of actual users of Defendants' dating websites or mobile applications, or actual women users of their dating websites or mobile applications;

(e) the terms and conditions for deleting user accounts or profiles;

(f) the extent to which Defendants received awards or seals from third parties; and

(g) the extent to which Defendants are members of, adhere to, comply with, are certified by, are endorsed by, or otherwise participate in any privacy or security program sponsored by a third party.

## **B. PROHIBITED CONDUCT**

11. Defendants, and Defendants' officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, whether acting directly or indirectly are permanently restrained and enjoined from engaging in the following conduct with respect to State consumer users of its online dating sites and mobile applications:

(a) Displaying any Engager Profile;

(b) If a "Full Delete" option or similar service is offered, failing to delete the accounts of any user who purchases that offer, as described in the terms of the "Full Delete" option.

**C. MANDATED DATA SECURITY PROGRAM**

12. Defendants must, no later than the Effective Date , establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about U.S. consumers of their online dating websites and mobile applications. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to Defendants' size and complexity, the nature and scope of Defendants' activities, and the sensitivity of the personal information collected from or about consumers, including:

(a) the designation of an employee or employees to coordinate and be responsible for the information security program;

(b) the identification of internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment must include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems,

such as network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures;

(c) the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures;

(d) the development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from Defendants, and requiring service providers, by contract, to implement and maintain appropriate safeguards; and

(e) the evaluation and adjustment of the information security program in light of the results of the testing and monitoring required by Paragraph 12(c), any material changes to Defendants' operations or business arrangements, or any other circumstances that Defendants know or have reason to know may have an impact on the effectiveness of the information security program.

#### **D. DATA SECURITY ASSESSMENTS BY A THIRD PARTY**

13. In connection with compliance with the Section of this Order titled Mandated Data Security Program, Defendant must obtain initial and biennial assessments ("Assessments"):

(a) The Assessments must be obtained from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. A professional qualified to prepare such Assessments must be: an individual qualified as a Certified Information System

Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); an individual holding Global Information Assurance Certification (GIAC) from the SANS Institute; or a qualified individual or entity approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

(b) Consistent with its obligations to the Federal Trade Commission, the reporting period for the Assessments must cover: (1) the first one hundred eighty (180) days after the Effective Date for the initial Assessment; and (2) each 2-year period thereafter for twenty (20) years after the Effective Date for the biennial Assessments. Each Assessment must:

(1) set forth the specific administrative, technical, and physical safeguards that Defendants have implemented and maintained during the reporting period;

(2) explain how such safeguards are appropriate to Defendants' size and complexity, the nature and scope of Defendants' activities, and the sensitivity of the personal information collected from or about consumers;

(3) explain how the safeguards that have been implemented meet or exceed the protections required by the Section of this Order titled Mandated Data Security Program; and

(4) certify that the security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

(c) Each Assessment must be completed within sixty (60) days after the end of the reporting period to which the Assessment applies. Defendants must submit the initial Assessment to the State within ten (10) days after the Assessment has been completed. Defendants must retain all subsequent biennial Assessments, at least until the Order terminates. Defendants must submit any biennial Assessments to the State within ten (10) days of a request from a representative of the State.

#### **VIII. RECORDKEEPING**

14. Consistent with its obligations to the Federal Trade Commission, Defendant must create and retain the following records, which the Attorney General has the right to inspect pursuant to paragraph 19:

- (a) accounting records showing the revenues from all goods or services sold;
- (b) personnel records, showing, for each person providing services relating to the subject matters of the Order, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- (c) records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- (d) all records necessary to demonstrate full compliance with each Section of this Order, including all submissions to the Commission; and
- (e) a copy of every materially different advertisement or other marketing material.



## IX. MONETARY JUDGMENT

15. Defendants shall pay the amount of Eight Million, Seven Hundred, Fifty Thousand USD (\$8,750,000) to the Multistate, Eight Hundred, Twenty-Eight Thousand, Five-Hundred USD (\$828,500) of which shall be divided, as determined by the Multistate, and paid to the States participating in the Multistate as per Paragraph 16, and the remainder, Seven Million, Nine Hundred, Twenty-One Thousand, Five-Hundred USD (\$7,921,500), which shall be suspended as per Paragraphs 17-18.

16. Based on Defendants' inability to pay a higher amount and still continue operating, as demonstrated in information produced to the State of Vermont and the Federal Trade Commission, in partial satisfaction of the amount stated in Paragraph 15, Defendants shall pay to the State Forty-Seven Thousand, Three Hundred and Seventy-Seven USD (\$47,377) within seven (7) days of the Effective Date. This sum is part of a total amount of Eight Hundred, Twenty-Eight Thousand, Five-Hundred USD (\$828,500) to be paid to the participating States in the Multistate, and the remainder, Seven Million, Nine Hundred, Twenty-One Thousand, Five-Hundred USD (\$7,921,500) shall be suspended.

17. The State's agreement to the suspension of part of the payment is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and related documents (collectively, "financial representations") submitted to the State of Vermont and the Federal Trade Commission, dated September 30, 2016, October 17, 2016, and October 19, 2016.

18. The suspended penalty of Seven Million, Nine Hundred, Twenty-One Thousand, Five-Hundred USD (\$7,921,500), will be immediately due, plus interest computed from the Effective Date, as per the Rules of Court Procedure of the State of

Vermont, if, upon motion by the State or the Federal Trade Commission, a court finds that Defendants failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations. Such payment shall be made to the Attorney General for the State of Vermont, to be distributed amongst the members of the Multistate in a manner to be agreed upon by the Multistate.

#### **X. REPORTING**

19. To determine or secure compliance with this Order, on reasonable notice given to Defendants, subject to any lawful privilege:

(a) Duly authorized representatives of the Attorney General may request electronic copies of any books, ledgers, accounts, correspondence, memoranda, records created or retained pursuant to Paragraph 14, and other documents and records in the possession, custody, or control of Defendants, and the documents and records to be provided relate to the violations described in this Order.

(b) Defendants shall submit written reports, under oath if requested, with respect to any matters contained in this Order.

#### **XI. MISCELLANEOUS PROVISIONS**

20. The Parties agree that this Order shall apply to Defendants, including all of their subsidiaries, affiliates, agents, representatives, employees, successors, and assigns, in existence as of the Effective Date. The Parties further agree that any subsidiaries, affiliates, agents, representatives, employees, successors, and assigns that Defendants acquire after the Effective Date shall comply with Sections IV.A and IV.B of

this Order within two (2) months of the acquisition and Sections IV.C and IV.D of this Order within six (6) months of the acquisition.

21. This Order is for settlement purposes only. No part of this Order constitutes or shall be deemed to constitute an admission or concession by Defendants as to any matter, including that any of the Defendants has violated any law or regulation, or to any liability or wrongdoing. The Parties acknowledge that this Order was agreed to without any trial or adjudication of any issue of fact or law or finding of wrongdoing or liability of any kind.

22. Upon full payment of the amount due under Paragraph 16, the State Attorney General hereby releases Defendants from all civil claims, actions, causes of action, damages, losses, fines, costs, and penalties related to the allegations of the Complaint in this action, that have been or could have been brought by the State Attorney General against Defendants or any of their respective current or former affiliates, agents, representatives, or employees pursuant to the State of North Dakota's Notice of Security Breach for Personal Information, N.D.C.C. ch. 51-30, or Consumer Fraud Law, N.D.C.C. ch. 51-15 on or before the Effective Date (the "Released Claims"). Notwithstanding any other term of this Order, the following do not comprise Released Claims: private rights of action; criminal claims; claims of environmental or tax liability; claims for property damage; claims alleging violations of State or federal securities laws; claims alleging violations of State or federal antitrust laws; claims alleging violations of State or federal false claims laws; claims brought by any other agency or subdivision of the State; and claims alleging a breach of this Order.

23. It is not the intention of the Parties to allow for the possibility of a double or duplicative recovery by any consumer.

24. The Parties agree that this Order does not constitute an approval by the State Attorney General of any of Defendants' past or future practices, and Defendants shall not make any representation to the contrary.

25. The requirements of this Order are in addition to, and not in lieu of, any other requirements of state or federal law. Nothing in this Order shall be construed as relieving Defendants of the obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of the provisions of this Order be deemed as permission for Defendants to engage in any acts or practices prohibited by such laws, regulations, or rules.

26. This Order shall not create a waiver or limit Defendants' legal rights, remedies, or defenses in any other action by the State Attorney General, except an action to enforce the terms of this Order or to demonstrate that Defendants were on notice as to the allegations contained herein.

27. This Order shall not waive or limit Defendants' rights to defend themselves, or make argument in, any other matter, claim, or suit, including, but not limited to, any investigation or litigation relating to the subject matter or terms of the Order, except with regard to an action by the State Attorney General to enforce the terms of this Order.

28. This Order shall not waive, release, or otherwise affect any claims, defenses, or position that Defendants may have in connection with any investigations, claims, or other matters the State Attorney General does not release in this Order.

29. Defendants shall not participate directly or indirectly in any activity to form or proceed as a separate entity or corporation for the purpose of engaging in acts prohibited in this Order or for any other purpose which would otherwise circumvent any part of this Order.

30. If any clause, provision or section of this Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Order and this Order shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

31. The section headings and subheadings contained in this Order are included for convenience of reference only and shall be ignored in the construction or interpretation of this Order.

32. In the event that any statute, rule, or regulation pertaining to the subject matter of this Order is enacted, promulgated, modified, or interpreted by any federal or state government or agency, or a court of competent jurisdiction holds that such statute, rule, or regulation is in conflict with any provision of the Order, and compliance with the Order and the subject statute, rule or regulation is impossible, Defendants may comply with such statute, rule or regulation and such action in the affected jurisdiction shall not constitute a violation of this Order. Defendants shall provide written notice to the State Attorney General that it is impossible to comply with the Order and the subject law and shall explain in detail the basis for claimed impossibility, with specific reference to any applicable statutes, regulations, rules, and court opinions. Such notice shall be provided immediately upon Defendants learning of the potential impossibility and at least thirty (30)

days in advance of any act or omission which is not in compliance with this Order. Nothing in this paragraph shall limit the right of the State Attorney General to disagree with Defendants as to the impossibility of compliance and to seek to enforce this Order accordingly.

33. All notices under this Order shall be provided to the following via email and Overnight Mail:

For ruby Corp., ruby Life, and ADL Media:

ruby Corp., ruby Life Inc., and ADL Media Inc.  
PO Box 67027  
Toronto, ON Canada M4P 1E4  
Attention: James Millership, President  
james.millership@rubylife.com

James Halpert  
Attorney for Defendants ruby Corp., ruby Life Inc., and ADL Media Inc.  
DLA Piper LLP  
500 Eighth Street, N.W.  
Washington, D.C. 20004  
202-799-4441  
jim.halpert@dlapiper.com

For the State of North Dakota:

Brian M. Card, ID No. 07917  
Assistant Attorney General  
Office of Attorney General  
Consumer Protection & Antitrust Division  
Gateway Professional Center  
1050 East Interstate Ave., Ste. 200  
Bismarck, ND 58503 5574  
Telephone (701) 328 5570  
bmc card@nd.gov


34. Defendants shall be liable for all court costs.

35. This court retains jurisdiction of this action for the purpose of ensuring compliance with this Order.

This Judgment is now entered.

**CLERK OF DISTRICT COURT**

Signed: 12/23/2016 10:07:29 AM

  
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By: \_\_\_\_\_

08-2016-CV-3285