

ELLEN K. BERZ  
CIRCUIT COURT, BR. 11

**FILED**  
AUG 20 2014

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

DANE COUNTY  
DANE COUNTY CIRCUIT COURT

STATE OF WISCONSIN  
17 West Main Street  
P.O. Box 7857  
Madison, WI 53703,

Plaintiff,

v.

Case No. 14CX46

Complex Forfeiture: 30109

GREEN PALM VACATIONS  
CORPORATION, formerly  
known as THOR CORP.  
7342 FM 726N  
Diana, TX 75640,

and

PERFEKT MARKETING, LLC  
3015 South 48<sup>th</sup> Street  
Tempe, AZ 85282,

Defendants.

THIS IS AN AUTHENTICATED COPY OF THE  
ORIGINAL DOCUMENT FILED WITH THE DANE  
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESQUEDA  
CLERK OF CIRCUIT COURT

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**SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

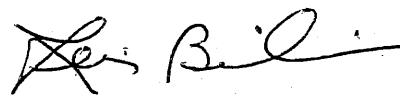
Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Wis. Stat. ch. 802, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Circuit Court, 215 South Hamilton Street, Madison, Wisconsin 53703, and to Lewis W. Beilin, Assistant Attorney General, plaintiff's attorney, whose address is Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 20<sup>th</sup> day of August, 2014.

Respectfully submitted,

J.B. VAN HOLLEN  
Attorney General



LEWIS W. BEILIN  
Assistant Attorney General  
State Bar #1038835

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**COMPLAINT**

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The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Lewis W. Beilin, Assistant Attorney General, on behalf of the Department of Agriculture, Trade and Consumer Protection (DATCP), brings this action against the defendants, Green Palm Vacations Corporation, and Perfekt Marketing, LLC,

alleging violations of Wisconsin consumer protection laws in connection with their marketing of travel club memberships in Wisconsin. The State alleges as follows:

### **PARTIES**

(1) Plaintiff, the State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. The address of the Wisconsin Department of Justice is 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53703-7857.

(2) Defendant Green Palm Vacations Corporation ("Green Palm") is a privately-owned corporation registered in the State of Texas. During the period relevant to this Complaint the company was known as "Thor Corp" and will be referred to herein for the sake of clarity as "Thor," unless the context requires otherwise. The address of Green Palm is 7342 FM 726N, Diana, Texas 75640. The Texas registered agent of Green Palm is John R. Thorold.

(3) Defendant Perfekt Marketing, LLC ("Perfekt") is an Arizona limited liability company. The company's address is 3015 S. 48<sup>th</sup> St., Tempe, AZ 85282.

### **JURISDICTION AND VENUE**

(4) The Court has jurisdiction over this action pursuant to Wis. Stat. §§ 100.171(8)(b), 100.20(6), and 100.26(6).

(5) Venue is appropriate in Dane County pursuant to Wis. Stat. § 801.50(d).

## FACTUAL ALLEGATIONS

(6) During the months of October and November 2012, approximately 80,000 Wisconsin households received postcards in the U.S. mail showing, on one side, the image of a commercial jetliner in flight and the phrase "powered by priceline.com" printed in the upper right-hand corner. Turning the card over, recipients found the following representations:

Dear [name of recipient]: Congratulations! You are going to receive 2 Round Trip Airfares on US Airways flying anywhere in the continental US and 3 Days/2 Nights at any Marriott or Hilton in the Continental U.S. Call within 48 hours. You will also receive as a bonus a 3 day rent-a-car by Alamo plus a \$50 Priceline.com hotel cash card! We have attempted contacting you several times. Note that this award must be claimed by no later than 7 days after postmark.

The logo of Alamo appeared on the reverse of the postcards, next to the printed statement quoted above.

(7) The postcards provided an (800) telephone number and the days and hours of the week during which recipients could call that number. An example of the postcard is attached here as Exhibit A.

(8) These postcards were mailed to Wisconsin households by Perfekt Marketing or someone acting at its direction. Perfekt Marketing arranged for the postcards to be mailed to Wisconsin households pursuant to a contract it had with Thor, as more fully described below.

(9) When a recipient of one of the postcards called the (800) number he or she was connected with an agent of Perfekt Marketing. The agent, following a written script, told the caller that Thor was sponsoring "this promotion." The caller

was then told that an "informative reception" was being held to explain Thor's services and "great ways to save money on future travel." Agents then told callers that in return for attending a 90-minute presentation they would receive a certificate redeemable for the travel promised on the postcard.

(10) At that point in the script, agents of Perfekt Marketing asked callers a series of personal questions concerning their marital status, monthly income, possession of a major credit card, and whether they worked in the travel industry.

(11) If the caller was married, had a monthly income of \$5,000 or more, possessed a major credit card and did not work in the travel industry, then the agent told him or her: "congratulations, you qualify for this promotion." The agent then proceeded to obtain the caller's contact information and schedule a time when the caller and the caller's spouse would attend the sales presentation.

(12) Perfekt Marketing conducted these telephone interviews of callers pursuant to a contract with Thor. Under that contract, Perfekt agreed to deliver "qualified units" (i.e., married couples meeting certain qualifications) to Thor's sales presentations. Under their contract, Thor agreed to pay Perfekt Marketing \$275 for each "qualified unit" that arrived at one of its presentations and stayed for at least 30 minutes. Thor also agreed to provide "premiums" to attendees at the presentations - those "premiums" being the travel certificates promised by Perfekt Marketing's telephone agents to interested callers.

(13) At each of the presentations, agents of Thor gathered attendees in a conference room and made a presentation of the benefits of joining something called

the "Vacation Fulfillment VIP Vacation Plan" ("Plan"). The Plan is operated by JD&T Enterprises, Inc. ("JDT"), a California company, doing business as "Vacation Fulfillment." At the conclusion of the group presentation Thor agents would attempt to sell memberships in the Plan to the attendees.

(14) Attendees who purchased membership in the Plan were, in essence, buying the right to ask JD&T personnel to book travel for them - i.e., to provide the services customarily offered by a travel agent. However, attendees at Thor's presentations were told that the Plan offered substantial discounts beyond what could be obtained from a typical travel agent.

(15) Attendees could either purchase a standard membership in the Plan, or they could purchase an "exit package" entitling them to a shorter period of membership. Upon information and belief, memberships were sold by Thor to Wisconsin consumers for between \$1,495 and \$6,593. The standard membership could be renewed by the member for a \$199 annual payment.

(16) Thor's presentations were conducted pursuant to a contract whereby Thor obtained a license from JD&T to sell memberships in the Plan. Under that contract, Thor agreed to purchase "kits" describing the Plan from JD&T, at a cost of \$150 for the "exit package" kit and \$250 for the standard package kit. These kits were 3-ring binders with enclosed informational pages.

(17) The contract further provided that Thor, not JD&T, would set the price of membership in the Plan, and that Thor, not JD&T, would retain the price paid for the membership by consumers.



(18) Further, the contract between Thor and JD&T provided that the annual membership fee of \$199 referred to above would be shared between the companies, \$49 going to Thor and \$150 going to JD&T.

(19) At least 372 couples attended a presentation given by Thor in Wisconsin for the Plan. At least 84 Wisconsin couples purchased a membership in the Plan after attending a presentation. In the aggregate, these 84 couples paid \$345,973.00 for their initial membership fees, an average of \$4,118.72 per couple.

(20) Couples who attended the presentations given by Thor did not receive the certificate(s) redeemable for the travel promised on the postcards and in the telephone interviews until *after* they had attended the entire 90-minute presentation.

(21) The postcards did not identify the name of Thor or of Perfekt Marketing. The only company names on the postcards were those of Priceline.com and Alamo car rental – neither of which, upon information and belief, had anything to do with the Plan, the presentations, or the creation and mailing of the postcards.

### RELEVANT LAWS

#### The Prize Notice Statute (Wis. Stat. § 100.171)

(22) Under Wis. Stat. § 100.171, a “prize notice” is defined as “a notice given to an individual that contains a representation that the individual has been selected or may be eligible to receive a prize,” or “conditions receipt of a prize on a payment from the individual or invites the individual to make a contact to learn how to receive the prize. . . .” Wis. Stat. § 100.171(1).

(23) A "prize notice" under Wis. Stat. § 100.171 may be oral or written.

(24) Wis. Stat. § 100.171 uses the term "solicitor" to identify the person who represents to an individual that the individual has been selected or may be eligible to receive a prize. The statute uses the term "sponsor" to identify the person, if any, on whose behalf a solicitor makes a prize notice to an individual.

(25) Before a solicitor may request or accept any payment from an individual to whom the solicitor has represented that the individual has been selected or may be eligible for a prize, the solicitor must give the individual a *written* prize notice. Wis. Stat. § 100.171(2).

(26) The written notice required under Wis. Stat. § 100.171(2) must contain several specific disclosures, including the name and address of the solicitor and sponsor. It must also include the verifiable retail value of each prize the individual has been selected or may be eligible for, as well as other specific items of information. Wis. Stat. § 100.171(3)(a)1. - 7.

(27) Whenever a prize notice - whether oral or written - requires or invites an individual to view, hear or attend a sales presentation in order to claim a prize, then the presentation *may not begin* until the solicitor informs the individual what prize he or she has been awarded, and delivers any such prize to the individual. Wis. Stat. §100.171(4). A solicitor may not require the individual to sit through a presentation before receiving the prize.

(28) Whoever violates Wis. Stat. § 100.171 may be required to forfeit not less than \$100 nor more than \$5,000 for each violation.

The Direct Marketing Rules: Mail Solicitations  
Wis. Admin. Code § ATCP chapter 127, subchapter III

(29) Under Wis. Admin. Code § ATCP chapter 127, subchapter III (hereinafter, "the direct mail rule,") a "mail solicitation" is defined to include any written or graphic communication, offering or promoting the sale of consumer goods or services, which the seller delivers by mail or other means to a consumer's residence. Wis. Admin. Code § ATCP 127.30(2).

(30) Under the direct mail rule, all "mail solicitations" must include certain disclosures. In particular, they must identify the name of the principal seller, i.e., the person who is selling, offering to sell or promoting the sale of consumer goods or services to consumers at issue. Wis. Admin. Code § ATCP 127.32(1)(a). Each "mail solicitation" must also disclose that the seller is offering or promoting the sale of consumer goods or services, and must disclose the nature of those goods or services. Wis. Admin. Code § ATCP 127.32(1)(b),(c).

(31) In addition, the direct mail rule prohibits sellers from violating the prize notice statute, Wis. Stat. § 100.171, in any "mail solicitation" or in the purchase contract resulting from a "mail solicitation." Wis. Admin. Code § ATCP 127.36(2). The direct mail rule also prohibits sellers from making misrepresentations in "mail solicitations," including misrepresentations as to the seller's identity, affiliation, location or characteristics. Wis. Admin. Code § ATCP 127.44(1).

(32) The direct mail rule also prohibits sellers from using a prize promotion that violates Wis. Stat. § 100.171. Wis. Admin. Code § ATCP 127.36(2). Finally,

the direct mail rule prohibits all persons from knowingly assisting any seller to engage in any activity or practice in violation of that rule. Wis. Admin. Code § ATCP 127.50.

(33) Whoever violates the direct mail rule must forfeit not less than \$100 nor more than \$10,000 for each violation. Wis. Stat. § 100.26(6).

## VIOLATIONS

### COUNT ONE

#### Violations of Direct Mail Rule: Green Palm (Thor) and Perfekt Marketing

(34) Plaintiff re-alleges all preceding paragraphs and incorporates them herein.

(35) The postcards delivered by mail to Wisconsin households and described in paragraphs 6 to 8 above are "mail solicitations" as defined by Wis. Admin. Code § ATCP 127.30(2).

(36) Thor is the "principal seller" in relation to the mail solicitations sent to Wisconsin households described herein.

(37) Thor and Perfekt Marketing violated Wis. Admin. Code § ATCP 127.32 by causing to be delivered to Wisconsin households mail solicitations that did not disclose the name of the principal seller.

(38) Thor and Perfekt Marketing violated Wis. Admin. Code § ATCP 127.32 by causing to be delivered to Wisconsin households mail solicitations that did not disclose that the seller was offering or promoting the sale of consumer services.

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Thor and Perfekt Marketing violated Wis. Admin. Code § ATCP 127.44 by

misrepresenting the seller's identity or affiliation when it delivered postcards that did not disclose Thor's identity but did include the names of "Priceline.com" and "Alamo," when in fact neither of those companies was either selling the services or was affiliated with Thor. In the alternative, Thor and Perfekt Marketing are liable for violations of Wis. Admin Code §§ ATCP 127.32, 127.44, by aiding and abetting the violations of those provisions by the other parties, as described herein.

**COUNT TWO**  
**Violations of Prize Notice Law: Green Palm (Thor)**

(39) The postcards mailed to Wisconsin households in October and November 2012 and described in paragraphs 6 to 8 above are "prize notices" within the scope of Wis. Stat. § 100.171(1).

(40) The oral representations made to Wisconsin consumers who called the (800) number on those postcards and were invited to attend a sales presentation are "prize notices" under Wis. Stat. § 100.171(1).

(41) Thor was either the "sponsor" or the "solicitor" of the prize notices referred to above.

(42) Thor violated Wis. Stat. § 100.171 by failing to deliver to attendees at the sales presentations the prizes promised to them, i.e., the travel certificates.

(43) Thor also violated Wis. Stat. § 100.171 by failing to give individuals a written prize notice compliant with Wis. Stat. § 100.171(3) prior to requesting and accepting payment from those individuals.

WHEREFORE, on the grounds of the preceding allegations and claims, the State of Wisconsin asks the Court to enter judgment as follows:

(A) A declaratory judgment that defendants have violated the Direct Marketing and Prize Notice laws and rules as alleged in this Complaint.

(B) Permanent injunctive relief against defendants, enjoining them from continuing violations of the Direct Marketing and Prize Notice laws and rules.

(C) A civil forfeiture of not less than \$100 nor more than \$5,000 for each violation of Wis. Stat. § 100.171 (Prize Notice law), pursuant to Wis. Stat. 100.171(7)(a).

(D) A civil forfeiture of not less than \$100 nor more than \$10,000 for each violation of Wis. Admin. Code § ATCP 123 (Direct Marketing), pursuant to Wis. Stat. § 100.26(6).

(E) An order that defendants pay the costs of the investigation leading to this enforcement action, statutory litigation costs, and attorney's fees.

(F) An order that defendants pay all applicable statutory court assessments as provided by law.

(G) Any further relief that the Court deems appropriate under the circumstances.

Respectfully submitted this 20<sup>th</sup> day of August, 2014.

J.B. VAN HOLLEN  
Attorney General



LEWIS W. BEILIN  
Assistant Attorney General  
State Bar #1038835

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