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COUNTY OF ORANGE
CIVIL COMPLEX CENTER

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COUNTY OF ORANGE
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ALAN CARLSON, Clerk of the Court

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BY P RIEF *r*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

DO RIGHT'S PLANT GROWERS et al.,

Plaintiffs,

v.

RSM EQUICO, INC. et al.,

Defendants.

Case No. 06CC00137

[Assigned to Hon. Thierry Patrick Colaw, Dep't
CX104] **TPC**

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: March 6, 2009

Time: 1:30 p.m.

Dept: CX104

Complaint Filed: July 11, 2006

Trial Date: None

The motion of plaintiffs Do Right's Plant Growers and Golden Eagle Moving Services, Inc. (collectively, "Plaintiffs"), on behalf of themselves and a class of others similarly situated, for an order granting class certification (the "Motion") came on regularly for hearing on March 6, 2009, in Department CX104 of the above-entitled court, the Honorable Thierry Patrick Colaw, Judge presiding. Plaintiffs appeared through their counsel Jerome L. Ringler and Thomas A. Kearney of Ringler Kearney Alvarez, LLP, and Catherine B. Schmidt of McNicholas & McNicholas, LLP. Defendants RSM EquiCo, Inc., RSM EquiCo Capital Markets, LLC, RSM McGladrey, Inc., RSM McGladrey Business Services, Inc., and EquiCo, Inc. (collectively "Defendants") appeared through their counsel Michael G. Yoder, Thomas Matthew Riordan, and Adam Levine of O'Melveny & Myers LLP, and Joel S. Miliband of Rus, Miliband & Smith, LLP.

1 After considering all papers and pleadings filed, the arguments of counsel, the entire files and
2 records in this action, and for good cause shown, IT IS HEREBY ORDERED THAT:

- 3 1. Plaintiffs' Motion is GRANTED;
- 4 2. A class action proceeding is procedurally superior to alternative means for a fair and
5 efficient adjudication of the litigation;
- 6 3. The class is defined as follows: All United States clients of Defendants who signed a
7 Platform Agreement with Defendants, but were not marketed by them (the "Class");
- 8 4. The Class is ascertainable and the members of the Class are so numerous that joinder of
9 all Class members is impracticable:
 - 10 a. Defendants have ascertained the identities of all Class members through a list they
11 compiled in response to the Court's *Pioneer/Belaire* order entitled "Order
12 Compelling Responses To Special Interrogatories, Set One" issued September 18,
13 2007; and
 - 14 b. More than a thousand members of the Class submitted declarations under penalty
15 of perjury that establish: the basic facts of their identity, residence, business
16 name; that a substantial payment was made to Defendants; and uniform
17 nondisclosure of certain material and common facts;
- 18 5. There is a community of interest among the Class:
 - 19 a. Plaintiffs' claims are typical of the claims of the other members of the Class;
 - 20 b. There is a predominance of common issues of law and fact:
 - 21 i) Plaintiffs allege eight causes of action in the Third Amended Complaint
22 including: three for fraud including concealment and intentional and
23 negligent misrepresentation based on the concealment allegations; breach
24 of written and oral contract; rescission; violations of California Business
25 and Professions Code sections 17200 and 17500; and conversion of
26 amounts paid to Defendants;
 - 27 ii) Further at the heart of the allegations are Plaintiffs' contentions that if
28 Defendants had disclosed certain facts common to all Class members,

1 Plaintiffs would not have paid Defendants up to \$50,000 in fees each;

2 iii) Common questions include, but are not limited to:

3 (a) Did all of the Class members pay \$50,000 for a "Platform" that
4 they were told was the first step in the marketing process?

5 (b) Did the Defendants market any of the businesses of any Class
6 member?

7 (c) Did Defendants disclose to any Class member that Defendants
8 actually marketed only 15% of all clients who signed a Platform
9 agreement?

10 (d) Did Defendants disclose to any Class member that Defendants sold
11 less than 3% of all clients who signed the Platform agreement?

12 (e) Did Defendants disclose to any Class member that Defendants sold
13 less than .3% of all clients who signed a Platform agreement to
14 offshore buyers?

15 (f) Were the undisclosed facts material so as to give rise to a duty to
16 disclose on the part of Defendants?

17 (g) Do the nondisclosures give rise to an inference of common reliance
18 on the part of all Class members?

19 iv) The Court finds some of the evidence particularly persuasive, including:
20 the declarations of Dudley Davis, Robert Johnson, and Mark Margulis; the
21 deposition transcripts of the seventeen Class members who were deposed
22 (*see* Plaintiffs' Compendium of Deposition Testimony of Putative Class
23 Members);

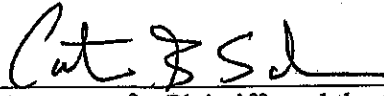
24 v) The Court finds the following evidence added to the weight of the
25 evidence in support of certification issues: Responses to Plaintiff Do
26 Right's Plant Growers' Special Interrogatories to Defendant RSM Equico,
27 Inc., Set Two (*see* Declaration of Thomas A. Kearney in Support of
28 Plaintiffs' Motion for Class Certification ("Kearney Decl.") ¶ 10 Ex. 1);

1 and certain of the numerous declarations of the Class members;

- 2 vi) The Court finds the following evidence also significant: the March 30,
3 2006 email from Larry Schwimmer to John Dal Poggetto (the
4 “Schwimmer e-mail”) (*see* Kearney Decl. ¶ 10 Ex. 2); the deposition of
5 Charles L. Hoffman (*see* Kearney Decl. ¶ 10 Ex. 9); the deposition of
6 Richard Rodnick (*see* Kearney Decl. ¶ 10 Ex. 4); and the deposition of
7 Kelly Osborne (*see* Kearney Decl. ¶ 10 Ex. 16);
- 8 vii) The Court finds that Defendants’ contention that their seminars were
9 unscripted is contradicted by the evidence (*see* Kearney Decl. ¶ 10 Exs. 3,
10 5, 6, 21, 22, and 23):
- 11 (a) The exhibit entitled “Overcoming Objections” is a script of
12 potential “objections” potentially posed by a prospective client and
13 scripted answers to those objections by the Business Analyst
14 (“BA”), who interfaced with Platform purchasers, that is, the Class
15 members (*see* Kearney Decl. ¶ 10 Ex. 6);
- 16 (b) The first page of “Overcoming Objections” includes responses
17 designed to deflect a Class member’s inquiry into business-sold
18 percentages, as well as the affirmation by Defendants’ BA that he
19 would not accept the Class member as a client if his company were
20 not saleable (*see* Kearney Decl. ¶ 10 Ex. 6 at 1);
- 21 (c) Similarly, the exhibit entitled “Seminar Checklist” directs the BA
22 how to organize and run the initial seminar and instructs the BA to
23 tell the Platform purchasers (Class members) that he already has
24 significant buyer interest in the Class member’s industry (*see*
25 Kearney Decl. ¶ 10 Ex. 21);
- 26 (d) The exhibit entitled “Strategic Action Steps” and “Features vs.
27 Benefits” and the exhibit entitled “Business Analyst Playbook”
28 detail precisely how the BA is to run the one-on-one meeting (*see*

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Respectfully submitted by,
Dated: 03/26, 2009

By: 
Attorneys for Plaintiffs and the Class

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1 **PROOF OF SERVICE**

2 *Do Right's Plant Growers et al. vs. RSM Equico, Inc. et al.*
3 [Case No. 06CC00137]

4 STATE OF CALIFORNIA,)
5) SS.
6 COUNTY OF LOS ANGELES)

7 I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles in the office at whose direction such service was made. I am not a party to the within action. My business address is 10866 Wilshire Boulevard, Suite 1400, Los Angeles, California.

8 On **March 26, 2009**, I caused the foregoing document described as **[PROPOSED]**
9 **ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**, to be served on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

10 *SEE ATTACHED SERVICE LIST*

11 (BY MAIL) I deposited such envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California.

12 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

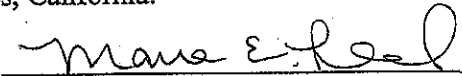
13 (BY FACSIMILE) The above-described document (s) were sent by facsimile transmission to the facsimile number(s) of the law office(s) stated above. The transmission was reported as complete and without error. A copy of the transmission report is made a part of this proof of service pursuant to California Rules of Court rule 2.306.

14 (BY OVERNIGHT DELIVERY) I placed the Overnight Express package for overnight delivery in a box or location regularly maintained by Overnight Express at my office or I delivered the package to an authorized courier or driver authorized by Overnight Express to receive documents. The package was placed in a sealed envelope or package designated by Overnight Express with delivery fees paid or provided for, addressed to the person(s) on whom it is to be served at the address(es) shown above, at the office address(es) as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence.

15 (State) I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

16 (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

17 Executed on **March 26, 2009**, at Los Angeles, California.

18 
19 _____
20 Maria E. Leal

SERVICE LIST

Do Right's Plant Growers et al. vs. RSM Equico, Inc. et al.

[Case No. 06CC00137]

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