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GEN. & JURISDICTION
TOPEKA KANSAS

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NAT.CJ/KRISTYH/SLAM

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, ex rel.)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
- vs.)
)
NATIONAL ACCOUNTS, INC.)
)
)
Defendant.)

Case No. 96CV370

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 2nd day of April, 1996, the Petition for Approval of Consent Judgment is considered by the court pursuant to K.S.A. 50-632(b). The Plaintiff, the State of Kansas, ex rel. Carla J. Stovall, Attorney General, appears by and through Kristy L. Hiebert, Assistant Attorney General. Defendant, National Accounts, Inc., appears by and through Robert T. Stephan. Whereupon the parties advise the court that they have stipulated and agreed to the following:

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 et seq.

3. Defendant National Accounts, Inc., is a foreign corporation organized under the the laws of the state of New Jersey. The principal office of the corporation is located at 119 Cherry Hill Road, Parsippany, New Jersey. Defendant National Accounts, Inc., applied with the Kansas Secretary of State for authority to do business in Kansas in December 1993 by filing a Foreign Corporation Application.

4. Pursuant to its Foreign Corporation Application, Defendant National Accounts may be served with process by serving its registered agent The Prentice-Hall Corporation System, Kansas, Inc., Suite 1108, 534 South Kansas Ave, Topeka, KS 66603.

5. The officers and shareholders of National Accounts are Neil Lang, President, and Richard Dubnoff, Vice President, both of Boonton, New Jersey.

6. Defendant admits that the court has jurisdiction over the parties and the subject matter.

7. Venue is proper in Shawnee County because an act or practice declared to be a violation of the Kansas Consumer

Protection Act occurred in such county and because Defendant has no principal place of business in the state of Kansas.

8. Defendant is engaged in business as a reseller and/or aggregator of long distance telecommunication services to Kansas consumers.

9. Defendant as an aggregator and/or reseller subscribes to a high volume/high discount long distance telecommunications service and uses its access to a long distance network, such as AT&T, to provide its own long distance service to its customer base for profit, thereby acting as the long distance carrier for those customers.

10. AT&T is one of the largest providers of long distance service in the United States and is widely known for providing such service. AT&T is obligated by federal regulation to offer its long distance telecommunications service to aggregators and/or resellers, such as National Accounts, Inc., which resell that service to their own customers.

11. National Accounts, Inc. controls the nature, quality and price of the long distance services provided to its customers.

12. The long distance service provided by National Accounts is carried on AT&T facilities or lines and National Accounts contracts with a company of AT&T named AT&T Bill Manager to generate and mail bills to Defendant's customers for National Account's services.

13. Beginning at a time unknown to Plaintiff but at least since June 1994, Defendant, through its agents, employees and representatives, has been conducting telemarketing contacts with Kansas consumers, many of them small businesses, in an effort to induce consumers to use their long distance service.

14. National Accounts, Inc., is not and never has been, an agent, subsidiary, corporation, partner or affiliate of AT&T.

15. AT&T does not authorize the use of its name in connection with a reseller that would imply that AT&T sponsors, endorses or is in any way affiliated with the reseller.

16. "Slamming" refers to the unauthorized switching of one's long distance service from their chosen carrier.

17. Defendant is a supplier within the definition of K.S.A. 50-624(i) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

18. The Attorney General alleges that Defendant violated K.S.A. 50-626 and K.S.A. 50-627 of the Kansas Consumer Protection Act in that Defendant, its agents and representatives knowingly and/or willfully committed deceptive and unconscionable acts and practices in consumer transactions including, but not limited to:

- a. Misrepresenting to consumers that Defendant's representatives are agents of or are representing AT&T, or otherwise implying that National Accounts is AT&T or affiliated therewith;

- b. Misrepresenting to consumers that Defendant's solicitation calls are calls by AT&T offering special discounts;
- c. Switching consumers' long distance service carrier to National Accounts when Defendant was told by consumers that they wanted to stay with their present long distance carrier;
- d. Misrepresenting to consumers that they would remain with AT&T;
- e. Misrepresenting that Defendant is with AT&T and is contacting consumers to verify their billing information;
- f. Failing to disclose to consumers that there is a charge for switching their long distance carrier;
- g. Failing to disclose to consumers that the purpose of the call is to invite the consumer to switch the consumer's long distance carrier to National Accounts;
- h. Failing to disclose that the caller represents National Accounts, Inc., a reseller and competitor of AT&T in the long distance service market;
- i. Misrepresenting that Defendant's rates will save the consumer money on their long distance calls;
- j. Failing to provide sufficient customer service support personnel to handle complaints from consumers regarding unauthorized switching of their long distance carrier

by Defendant thereby effectively blocking the consumers from lodging complaints and receiving prompt refund/credit and return to their carrier of choice;

- k. Failing to act promptly to refund or credit consumers for monies received as a result of slamming;
- l. Failing to act promptly to return the consumer's long distance service to the carrier they were switched from;
- m. Misrepresenting the role of AT&T Bill Manager to imply that the consumers long distance carrier would be AT&T.
- n. Representing that Defendant's services have a sponsorship, approval, characteristics or benefits that they do not have;
- o. Representing that Defendant has a sponsorship, approval, status, affiliation or connection that it does not have;
- p. Willfully using exaggeration, falsehood, innuendo or ambiguity as to a material fact;
- q. Willfully failing to state a material fact, or willfully concealing, suppressing or omitting a material fact.

19. The Defendant, by entering into this Consent Judgment, does not admit the violations alleged to be deceptive or unconscionable in paragraph 18 herein.

20. The Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

21. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant.

22. The Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

23. The Defendant agrees to refrain from and to be permanently enjoined from engaging in all deceptive or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 et seq., as it now exists or as amended in the future.

24. The Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph 18 of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

25. For each customer who has filed a complaint with the Attorney General's Office or who will file a complaint with the Attorney General regarding a switch in their long distance carrier which occurred prior to the date of this Consent Judgment, Defendant agrees to refund the total amount paid by such customer for calls billed by National Accounts. The refunds shall be provided within 30 days of the date of this Consent

Judgment or the date the complaint is received by Defendant, whichever date is later. If the customer has not paid National Accounts and has outstanding bills, Defendant will credit the account so that it has a zero balance. Defendant agrees to remove such customers from their service upon request and to inform the customer to notify their chosen carrier that the customer desires to be switched back to their chosen carrier's long distance services. Defendant will reimburse such customers for any switching charges incurred. Defendant also agrees that no negative credit information has been or will be reported to any credit reporting agency for nonpayment of a bill from National Accounts for such complainants.

26. For any future complaints filed with the Office of the Attorney General regarding a switch of long distance services, which switch occurs after the date of this Consent Judgment, Defendant agrees to resolve such complaints to the satisfaction of the Attorney General within 30 days after such complaint has been forwarded to the Defendant for a response.

27. In each and every solicitation or contact with a potential customer, verbal or written, Defendant shall state at least twice, once at the beginning and once at the end of the solicitation, before obtaining the customer's name, address and phone numbers(s) the following:

- a. The representative, employee or agent's full name;

- b. That the representative, employee or agent is making contact on behalf of National Accounts, Inc., and shall not use the word "plan" in conjunction with the words "National Accounts";
- c. That the purpose of the contact is to obtain authorization by the consumer to switch their long distance service from their current carrier to National Accounts, Inc. The word switch shall be used in the communication;
- d. That National Accounts is not in any way a part of or affiliated with AT&T;
- e. That National Accounts is a reseller of long distance services;
- f. That AT&T Bill Manager is the name of the company that National Accounts pays to prepare the bills for National Account's customers and that National Accounts is not a part of or a subsidiary of AT&T;
- g. Anytime the words "AT&T" or a reference to AT&T are used, the communication shall state that National Accounts is not AT&T;
- h. That there may be a service charge for switching long distance carriers.

28. Before submitting any change orders in the future to switch a customer, Defendant shall obtain a written Letter of Agency (LOA) from the customer on the form attached hereto and

incorporated by reference herein as Exhibit 1. This document shall be a separate document from other promotional material and solicitations mailed to the customer and shall not be altered in any manner, including size, typestyle and layout, except for filling in the name of the PIC and/or the agent.

29. The Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms or this Consent Judgment.

30. The Defendant agrees to pay \$30,000.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay a \$15,000.00 charitable donation to the "Office of the Attorney General" to be given to a charity of the Attorney General's choice and \$5,000.00 in civil penalties to the "State of Kansas". Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of signing the Consent Judgment.

31. The Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of the Defendant's business records in the future.

32. The Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts

in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

33. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

34. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

35. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction, except that violations of the Kansas Consumer Protection Act, K.S.A. 50-623 et seq., occurring prior to the date of this Consent Judgment, have been resolved by this Consent Judgment.

36. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent the decree as such an approval. The parties

further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

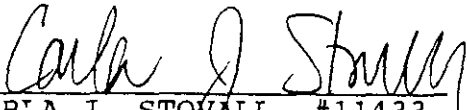
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the order of the court.

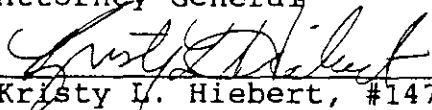
IT IS SO ORDERED.

DISTRICT COURT JUDGE

Approved by:


PLAINTIFFS


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