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SHAWNEE JUDICIAL DIST  
DIVISION 3  
KANSAS

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**  
**Division 3**

**STATE OF KANSAS, *ex rel.***  
**CARLA J. STOVALL, Attorney General**

**Plaintiff,**

**vs.**

**HOME CABLE INCORPORATED,**  
**d/b/a HOME CABLE CONCEPTS,**

**Defendant.**

**Case No. 97 CV 645**

**(Pursuant to K.S.A. Chapter 60)**

**JOURNAL ENTRY OF JUDGMENT**

**NOW** on this 9<sup>th</sup> day of December, 1999, comes before the Court the Motion to Enforce Judgment filed by Plaintiff. Plaintiff State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through counsel, Gail E. Bright, Assistant Attorney General. Defendant appears not

Whereupon, the Court, after reviewing the file and statements have counsel, finds that the Motion to Enforce Settlement should be sustained and the Court finds the parties have stipulated and agreed to the following matters:

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, Home Cable Incorporated, d/b/a Home Cable Concepts, is a foreign corporation organized under the laws of the State of Ohio. The principal office of the corporation is located at 6266 Centre Park Drive, West Chester, Ohio, 45069.

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

5. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

6. Defendant stipulates and waives any objections to venue in Shawnee County.

7. Defendant was engaged in the business of selling satellite television systems, products and services to consumers in Kansas for personal, family, household or business purposes.

8. The Attorney General alleges Defendant engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*:

- a. Defendant represented that it provided 24-hour service to subscribers when, in truth and in fact, it did not, thus representing its property or services had accessories, characteristics, uses, and benefits they did not have, in violation of K.S.A. 50-626(b)(1)(A);
- b. Defendant represented that pay-per-view movies would cost \$.99/day and \$2.50/night when, in truth and in fact, there were additional costs associated with viewing pay-per-view movies, thus representing its property or services had accessories, characteristics, uses, and benefits they did not have, in violation of K.S.A. 50-626(b)(1)(A);
- c. Defendant represented that consumers could receive all premium channels (i.e. Disney, HBO, Cinemax, etc.) at no extra cost, when, in truth and in fact, consumers could only receive premium channels for an extra cost, thus representing its property or services had accessories, characteristics, uses, and benefits they did not have, in violation of K.S.A. 50-626(b)(1)(A);
- d. Defendant represented that consumers would receive better reception on local channels with Defendant's satellite television system, when, in truth and in fact, consumers were not able to receive local channels through Defendant's satellite television system at all, thus representing its property

or services had accessories, characteristics, uses, and benefits they did not have, in violation of K.S.A. 50-626(b)(1)(A);

- e. Defendant represented that the Revolving Charge Account would be paid off within five years when, in truth and in fact, it would take 144 months (12 years) to pay off the account, constituting the willful use, in oral or written representations, of exaggeration, falsehood, innuendo or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2);
- f. Defendant represented that their satellite systems would be upgraded, without additional cost to consumers when, in truth and in fact, Defendant did not upgrade satellite systems unless consumers were willing to incur an extra charge, constituting the willful use, in oral or written representations, of exaggeration, falsehood, innuendo or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2);
- g. Defendant represented that consumers' monthly payments would decrease \$3.00 every three months when, in truth and in fact, payments did not decrease, constituting the willful use, in oral or written representations, of exaggeration, falsehood, innuendo or ambiguity as to a material fact, in violation of K.S.A. 50-626(b)(2);
- h. Defendant induced consumers to enter into transactions which were excessively one-sided in favor of the supplier in that Defendant's purchase agreement allows them to change all the material terms of the agreement, including the finance charge, whereas consumers are not given the opportunity to terminate the agreement, in violation of K.S.A. 50-627(b)(5);
- i. Defendant's agreement excluded, modified or otherwise attempted to limit the implied warranties of merchantability and fitness for a particular purpose, in violation of K.S.A. 50-627(b)(7);
- j. Defendant's contract failed to have in close proximity of the signature line, in boldface type of a minimum of 10 points, a statement in substantially the following form: "YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT," in violation of K.S.A. 50-640(b)(1);
- k. Defendant failed to provide each and every consumer with a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and be easily detachable, and which shall contain in 10-point boldface type a general statement of consumer's right to cancel, in violation of K.S.A. 50-640(b)(2); and
- l. Defendant failed to inform each consumer orally of consumer's right to cancel, in violation of K.S.A. 50-640(b)(5).

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

10. 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 eight (8) 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.

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

12. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees in managerial positions, agents and representatives within thirty days (30) of signing the Consent Judgment.

13. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of the Attorney General within thirty (30) days of the date such complaint is forwarded to Defendant for resolution. However, such complaint resolution shall not be construed to relieve Defendant from any enforcement action by the Attorney General for violating this Consent Judgment.

14. 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 of this Consent Judgment.

15. Defendant agrees to cancel and hereby cancels all contracts for the purchase of satellite television systems for the consumers listed in Exhibit A attached hereto, and said contracts are declared fraudulent, deceptive, unconscionable, null and void *ab initio*, and shall have no binding force or effect whatsoever.

16. Defendant agrees to indemnify and hold harmless the consumers listed in Exhibit A for any action taken against said consumers by a holder of their consumer credit contracts for

the purchase of satellite television systems from Defendant, in order to collect any obligation arising therefrom. Any holder of the consumer credit contracts for consumers listed in Exhibit A are subject to all claims and defenses which the consumers could assert against Defendant for the sale of goods and/or services obtained pursuant to the consumer credit contracts or with the proceeds thereof.

17. Defendant agrees to correct, or ensure correction of, any negative information reported on any of the consumers' credit reports in connection with their purchase of the Defendant's goods and/or services and repair any physical damage to consumers' property resulting from the installation of a satellite television system.

18. Defendant agrees to pay the total sum of \$17,471.12 as restitution to the consumers listed in Exhibit B attached hereto, in their respective amounts, pursuant to K.S.A. 50-632(a)(3). Payment shall be made by cashiers checks made payable to the "Office of the Attorney General of the State of Kansas," and shall be delivered to the Office of the Attorney General at the time this Consent Judgment is executed.

19. Defendant agrees to pay \$7,500.00 in investigation fees and expenses and \$7,500.00 in civil penalties to the "Office of the Attorney General of the State of Kansas." Payments shall be made by cashiers checks and shall be delivered to the Office of the Attorney General.

20. Defendant agrees to make an initial payment at the time of signing this Consent Judgment in the total amount of \$22,000.00. This will constitute full payment of the \$17,471.12 in consumer restitution, with the remaining amount of \$4,528.88 being applied toward the \$15,000.00 owed for fees and penalties.

21. Defendant further agrees to make monthly installment payments of \$1,000.00 beginning thirty (30) days from the date of this Consent Judgement until paid in full. Defendant agrees that failure to make timely payments as set forth above, will result in the entire outstanding balance becoming due within five (5) days of the first day missed. Defendant also

agrees that in the event of a missed payment, failure to remit the entire outstanding balance within five (5) days shall constitute a violation of this order.

22. 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 or for the enforcement of compliance herewith.

23. If any portion, provisions, 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.

24. Compliance with this Consent Judgment does not relieve Defendant of any obligations 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.

25. 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 Defendant nor shall 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 of Defendant.

**IT IS THEREFORE BY THE COURT 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.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Exhibits A and B are incorporated herein by reference and made part of the order of the Court.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the contracts for the purchase of satellite television systems by the consumers listed in Exhibit A attached hereto, are hereby declared fraudulent, deceptive, unconscionable, null and void *ab initio*, and shall have no binding force or effect whatsoever.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall indemnify and hold harmless the consumers listed in Exhibit A for any action taken against said consumers by a holder of their consumer credit contracts for the purchase of satellite television systems from Defendant, in order to collect any obligation arising therefrom. Any holder of the consumer credit contracts for consumers listed in Exhibit A are subject to all claims and defenses which the consumers could assert against Defendant for the sale of goods and/or services obtained pursuant to the consumer credit contracts or with the proceeds thereof.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant in favor of Plaintiff in the amount of \$32,471.12.

**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.**

/s/ Marla J. Luckert  
The Honorable Marla J. Luckert  
Judge of the District Court

**PREPARED BY:**

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