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KS. DISTRICT COURT - 3RD JUDICIAL DISTRICT
Dec 28 4 14 PM '98

TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

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

Plaintiff,

vs.

NATIONAL CREDIT CARD PROTECTION, LIMITED,
d/b/a NATIONAL CREDIT CARD PROTECTION, and
d/b/a NCCP, LTD.,

Defendant.

Case No. 98 CV 1664

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 20th day of December, 1998, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant National Credit Card Protection, Limited, d/b/a National Credit Card Protection and d/b/a NCCP, Ltd. appears by and through Tyler Prochnow.

Whereupon, the parties advise the Court that they have stipulated and agree 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 National Credit Card Protection, Limited, d/b/a National Credit Card Protection and d/b/a NCCP, Ltd., is a corporation organized under the laws of the State of Delaware. The principal office of the business is located at 56 Harvester Avenue, Batavia, New York 14020. Defendant National Credit Card Protection, Limited, d/b/a National Credit Card Protection and d/b/a NCCP, Ltd., also uses the address 3701 Chesswood Drive, Downsview, Ontario M3J 2P6, Canada.

4. Defendant National Credit Card Protection, Limited, d/b/a National Credit Card Protection and d/b/a NCCP, Ltd., may be served with process by serving its registered agent, Cary Title, 56 Harvester Avenue, Batavia, New York 14020.

5. 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).

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

7. Defendant stipulates and waives any objection to venue in Shawnee County.

8. The Attorney General alleges that Defendant has engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendant provided some consumers with literature promoting Defendant's business which included the representation that consumers, upon making the decision to use Defendant's services have "elevated (themselves) to membership in the premier credit card protection service," affording such consumers protection "against the tremendous inconvenience and accountability for the \$50 deductible that may be associated with the loss or theft of your cards . . ." Thereby, Defendant sets out the federal liability for a consumer when fraudulent charges are made to such consumer's credit card; however, such statement is unclear

and ambiguous and does not inform specifically inform consumers that consumers are afforded such limitations upon liability under federal law whether or not the consumer opts to purchase Defendant's services. This is in violation of K.S.A. §50-626(b)(3), in that it is the willful failure to state a material fact and the willful concealment, suppression and omission of a material fact.

- b. Defendant failed to provide consumers with a confirmation of sale which conforms with K.S.A. §50-672(b). Some consumers received no such confirmation. Consumers who did receive such confirmation received a confirmation which did not include Defendant's address and telephone number, a detailed description of the services being sold, a duplicate copy of the confirmation, and the following statement in a type size of a minimum of twelve points, in a space immediately preceding the space allotted for the consumer signature: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE SELLER," in violation of K.S.A. §50-672(b).
- c. Defendant accepted payment and/or submitted charges to consumers' credit card accounts before receiving from such consumers an original copy of a confirmation, signed by the consumer that complied with K.S.A. §50-672(b). Defendant's acceptance of such payment and submitting of charges to consumers' credit cards is in violation of K.S.A. §50-672(c).
- d. Defendant's enforcement of credit card charges and transactions for transaction in which such signed confirmations were not received by Defendant are unconscionable, in violation of K.S.A. §50-675(b).

- e. Defendant's registration and/or confirmation forms' exclusion of a statement that a consumer would not be responsible for any charge unless and until the consumer signed such confirmation and returned the same to the defendant is in violation of K.S.A. §50-626(b)(11), in that it is the sending and deliver a solicitation for goods and services which could reasonably be interpreted or construed as a bill, invoice, or statement of account due.
- f. Defendant's transactions with Kansas consumers are unconscionable, in violation of K.S.A. §50-627(b)(1) in that Defendant took advantage of the inability of consumers to reasonably protect the consumer's interests because of the consumer's inability to determine that limitations of liability of consumers of federal law are afforded to all consumers, whether or not a consumer opts to purchase Defendant's services. Defendant's transactions with Kansas consumers are also in violation of K.S.A. §50-627(b)(5), in that the transactions Defendant induced consumers to enter into were excessively one-sided in favor of Defendant.
- g. Defendant made solicitations and sales described above to consumers who are elder persons (60 years of age or older), as defined by K.S.A. §50-676(a). Defendant's pattern of deceptive and unconscionable practices in transactions with elder consumers subjects Defendant to enhanced penalties, pursuant to K.S.A. §50-677.

9. Defendant specifically denies liability, but 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. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/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 and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

13. Defendant agrees to make available and to disclose the provisions of this Consent Judgment to his employees, agents and representatives within five days of signing the Consent Judgment.

14. Defendant agrees to make full refunds to all consumers with a Kansas address from whom Defendant has accepted payment, or who have otherwise transacted business with Defendant. Such refunds shall be made payable to individuals due such refunds, and delivered to the Kansas Attorney General's Office in the form of cashiers checks or money orders at the time of Defendant's signing of this Consent Judgment.

15. 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 30 days of the date such complaint is forwarded to Defendant for resolution.

16. 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.

17. Defendant agrees to pay \$ 2,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$ 1,250 in

civil penalties to the "State of Kansas," and an additional \$1,250.00 in civil penalties for violations of the Kansas Consumer Protection Act committed against elderly consumers, pursuant to K.S.A. §50-677 (totaling \$2,500 civil penalties). Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing of this Consent Judgment.

18. 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.

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

20. 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 for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof, or for modification of this Consent Judgment upon agreement of the parties. The parties agree that this Consent Judgment resolves all issues known to parties under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in paragraph eight (8), including sub-paragraphs, of this Consent Judgment up through the date of the execution of this Consent Judgment. Pursuant to the terms of this Consent Judgment, the Kansas Attorney General agrees that she and her office will not pursue any claims, demands or civil causes of action under the Kansas Consumer Protection Act against Defendant for the acts and practices alleged to be deceptive and/or unconscionable in paragraph eight (8) of this Consent Judgment up through the date of the execution of this Consent Judgment, excepting only any action which may be required to enforce the provisions of this Consent Judgment.

21. 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.

22. Compliance with this Consent Judgment does not relieve 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.

23. 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 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.

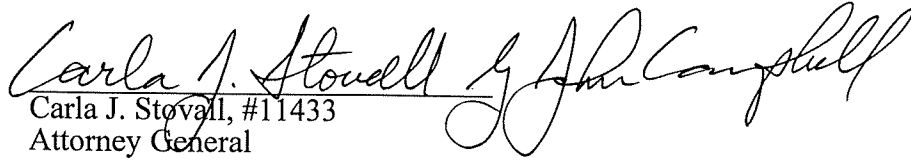
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$ 5,000.

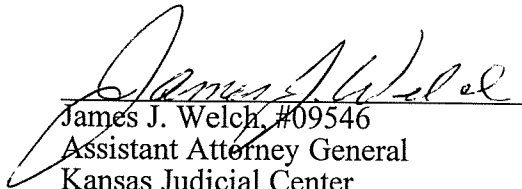
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

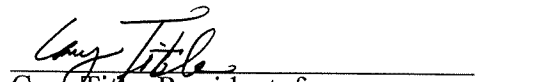
IT IS SO ORDERED.

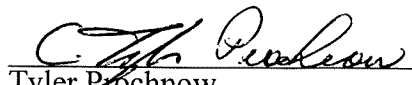
/s/ Hon. Franklin B. Theis
DISTRICT COURT JUDGE

Approved by:


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