

99-053

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FILED BY CLERK
KS. DISTRICT COURT
3rd JUDICIAL DISTRICT
AUG 31 4 50 PM '99
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 4

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

Plaintiff,

vs.

CGS WORLDWIDE, INC.,
d/b/a CHECK GUARANTEE SERVICES,

Defendant.

Case No. 99C1126

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 31st day of August, 1999, 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 CGS Worldwide, Inc., d/b/a Check Guarantee Services, appears by and through Jeffrey A. Wietharn.

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 CGS Worldwide, Inc., d/b/a Check Guarantee Services, is a foreign corporation organized under the laws of the state of Texas. The principal office of the corporation is located at P.O. Box 151315, Arlington, Texas 76015. Defendant CGS Worldwide, Inc., d/b/a Check Guarantee Services, has not applied with the Kansas Secretary of State for authority to do business in Kansas. The corporation can be served with process by serving the Kansas Secretary of State with directions to serve the corporation's registered agent, Daniel E. Blumberg, 1414 West Randol Mill Road, Suite #118, Arlington, Texas 76012.

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

5. The officers of CGS Worldwide, Inc., d/b/a Check Guarantee Services, are Steven M. Hawthorne (President/Vice-President/Treasurer), and Daniel E. Blumberg (Secretary), are both residents of the state of Texas.

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. Defendant solicits small businesses to purchase Defendant's check collection services. Merchants enter into Purchase Agreements with Defendant, through which Defendant purchases certain "NSF" checks from merchants and subsequently attempts to collect the same. To date, approximately 787 such merchants located within the State of Kansas have entered into Purchase Agreements with Defendants.

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

a. Defendant solicited Kansas merchant-consumers by visiting such consumers' places of business. Defendant's transactions with consumers within the State of Kansas constitute door-to-door sales, as defined by K.S.A. §50-640. A true and correct copy of Defendant's Purchase Agreement forms (which serve as

consumers' receipts) is attached hereto and marked as Exhibit A. Defendant failed to furnish consumers with fully completed receipts which contained, in immediate proximity to the space reserved for the consumers' signatures, notices of consumers' rights to cancel, in violation of K.S.A. §50-640(b)(1).

- b. Defendant failed to furnish consumers with a completed "Notice of Cancellation" form in duplicate, attached to consumers' receipts which were easily detachable and which contained the consumers' right to cancellation form in 10-point boldface type, in violation of K.S.A. §50-640(b)(2).
- c. Defendant failed to inform consumers orally of such consumers' rights to cancel, at the time such consumers signed the contracts, purchasing services of Defendant, in violation of K.S.A. §50-640(b)(5).
- d. Defendant's Purchase Agreement allows merchant-consumers to cancel the agreement "after an initial ninety (90) days with thirty (30) days written notice sent by certified mail." The Purchase Agreement provides that in the event of such cancellation, the merchant-consumer "shall be responsible for all forwarding, handling, and service fees involved in closing their accounts" with Defendant. Although consumers are given no specific amounts of these fees, the descriptions/purposes of such would seem to indicate that the same would be minimal. Defendant fails to disclose that the base "fee to close account" is \$150.00 and the "fee to return checks" to the merchant-consumer is \$25.00 per check, and that both amounts are variable based on the volume of the merchant-consumer's account. This is in violation of K.S.A. §50-626(b)(3), in that it is the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.
- e. Defendant's failure to disclose the material fact of the substantial amounts of fees charged to merchant-consumers in the event of such merchant-consumers'

cancellations is in violation of K.S.A. §50-640(b)(6), in that it is the misrepresentation of the consumer's right to cancel.

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

11. 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 nine (9) 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.

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/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

14. Defendant agrees to provide full refunds to consumers who have filed complaints with the Office of the Attorney General prior to the date of this Consent Judgment, which have, as of the date of this Consent Judgment, not been resolved. Such consumers and amounts of refunds due are referenced in Exhibit A 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, in a manner consistent with the Kansas Consumer Protection Act, 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 \$3,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$3,500 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 Defendant's signing 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 unprivileged 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 or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations thereof.

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 \$ 7,000.

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.

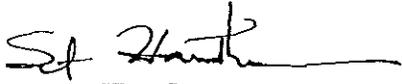
IT IS SO ORDERED.

/s/ Eric S. Rosen
DISTRICT COURT JUDGE

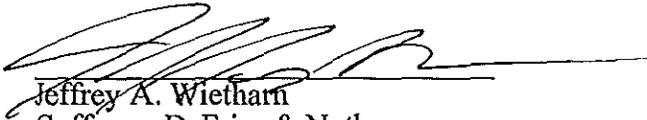
Approved by:

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