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KS. DISTRICT COURT  
THIRD JUDICIAL DISTRICT  
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JURISDICTION  
K.A. KANSAS  
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION II

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

Plaintiff,

vs.

VACATION BREAK, U.S.A., Inc.

Defendant.

Case No. 99-C-1666

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 29 day of Nov, 1999, comes before the Court Plaintiff's Petition for Approval of the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Derek L. Schmidt, Assistant Attorney General. Defendant, Vacation Break U.S.A., Inc., appears by and through Gardiner B. Davis.

WHEREUPON, the parties advise the court that they have stipulated and agreed to the following matters:

THE PARTIES

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 statutory and common law of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant is a corporation organized under the laws of the State of Florida. Defendant's principal place of business is located at 6400 North Andrews Avenue, Park Plaza Suite 200, Fort Lauderdale, Florida 33309. Franz Hanning is president of Defendant corporation and has authority to sign this Journal Entry of Consent Judgment on behalf of Defendant and to bind Defendant hereto.

4. Defendant is a supplier within the definition of K.S.A. 50-624(i) and, at all times relevant hereto, has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

#### JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over this case under statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

6. The Court has personal jurisdiction over the parties under the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and by consent of the parties.

7. The parties agree that venue is proper in the Third Judicial District of Kansas (Shawnee County).

8. Defendant waives service of process related to this Consent Judgment and appears voluntarily as allowed by K.S.A. 60-303(d).

#### STATEMENT OF AGREED FACTS

9. Defendant was in the business of selling certain travel services to consumers.

10. Defendant mailed, or caused to be mailed, at least 193,465 direct mail solicitations (hereinafter "Eagle Certificate solicitations") to consumers in the State of Kansas after July 1, 1994.

11. In connection with the distribution of Eagle Certificate solicitations in Kansas, Defendant made, or caused to be made, an unknown number of telemarketing calls with consumers in the State of Kansas after July 1, 1994.

ALLEGATIONS AND DENIALS

12. The Attorney General has conducted an investigation of Defendant's business practices in the State of Kansas pursuant to the authority and requirements of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

13. Based upon information gathered in the course of the investigation described in paragraph twelve (12), the Attorney General alleges that Defendant has engaged in and/or is engaged in deceptive acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, including but not limited to the following:

- a. Defendant, acting by and through telemarketers and/or by and through Eagle Certificate solicitations, represented to consumers that consumers would receive a "BONUS" mini-vacation for purchasing travel services from Defendant by calling promptly, by making a purchase during a particular telemarketing call, and/or by calling "within 48 hours" when, in truth and in fact, the "BONUS" mini-vacation was provided to all consumers who purchased travel services from Defendant as part of Defendant's routine package of services without regard to whether the consumer called promptly, made a purchase during a particular telemarketing call, and/or called "within 48 hours," a willful use of exaggeration, falsehood, innuendo or ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2).
- b. Defendant, acting by and through telemarketers and/or by and through Eagle Certificate solicitations, failed to disclose to consumers that consumers would incur substantial additional costs to use any travel services provided by Defendant, including costs for air fare, certain hotel fees and certain taxes, a willful failure to

state a material fact or the willful concealment, suppression or omission of a material fact, in violation of K.S.A. 50-626(b)(3).

- c. The Eagle Certificate solicitations used by Defendant failed to clearly and conspicuously disclose to consumers that the purchase of a vacation package is required in order for the consumer to receive a discount vacation package, a willful failure to state a material fact or the willful concealment, suppression or omission of a material fact, in violation of K.S.A. 50-626(b)(3).

14. Defendant denies the allegations of the Attorney General as set forth in paragraph thirteen (13). To avoid the unnecessary time and expenses of litigation, and solely for the purpose of settlement, the parties have agreed to entry of this Journal Entry of Consent Judgment without trial or adjudication of any issue of law or fact and without any admission or finding of liability on the part of Vacation Break. This Journal Entry of Consent Judgment resolves all concerns of the State of Kansas and the Office of the Attorney General with respect to the application of state and federal consumer protection laws to Defendant's acts and practices which occurred prior to the date of entry of this Journal Entry of Consent Judgment and which are the subject of this lawsuit.

#### INJUNCTIVE RELIEF

15. Defendant agrees to refrain from and to be permanently enjoined from representing to consumers that consumers will receive a "BONUS" mini-vacation for purchasing travel services from Defendant by calling promptly, by making a purchase during a particular telemarketing call, and/or by calling "within 48 hours" if the "BONUS" mini-vacation is routinely provided to consumers who purchase travel services from Defendant regardless of when they call. Defendant agrees that failing to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

16. Defendant agrees to refrain from and to be permanently enjoined from failing to disclose to consumers in a clear and conspicuous manner whether or not the discount vacation

package includes transportation, including but not limited to airfare, and whether the consumers are required to pay hotel fees and taxes, if the consumer is required to pay hotel fees and taxes. Defendant agrees that failing to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

17. Defendant agrees to refrain from and to be permanently enjoined from failing to disclose to consumers in a clear and conspicuous manner that a purchase of the discount vacation package is required, if the consumer is required to purchase the discount vacation package to receive the discount vacation package. Defendant agrees that failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

18. Defendant agrees to refrain from and to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, or entering into any contract or agreement, for the purpose of avoiding compliance with the terms of this Consent Judgment. Defendant agrees that failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

19. Defendant agrees to refrain from engaging in any consumer transaction in Kansas unless Defendant is in compliance with the Kansas Prize Notification statute, K.S.A. 50-692 *et seq.*, if such statute is applicable to the solicitation or other activity of Defendant in the State of Kansas.

20. Defendant agrees to refrain from and to be permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by or authority from the State of Kansas and/or the Attorney General of the State of Kansas for Defendant's business practices. Defendant agrees that the making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Order.

### CONSUMER RESTITUTION

21. Defendant agrees to refund any and all money paid to Defendant by any Kansas consumer who purchased travel services from Defendant in response to receiving an Eagle Certificate solicitation, provided all of the following conditions are met:

- a. The consumer has not traveled on the discount vacation package purchased from Defendant.
- b. The consumer files a written complaint against Defendant with the Consumer Protection Division of the Office of the Attorney General of the State of Kansas not later than thirty (30) days after the date of entry of this Consent Judgment, exclusive of the date of entry. The date of filing of any such complaint shall be evidenced by the postmark on the envelope from the consumer if such complaint is filed by United States mail, the date such complaint is marked received in the Office of the Attorney General if such complaint is filed in person or by facsimile transmission, or the date electronically appended to such complaint if such complaint is filed through the Internet.
- c. The money claimed by the consumer has not previously been refunded to the consumer by the Defendant.

### MONETARY PAYMENT

22. Pursuant to K.S.A. 50-623 *et seq.*, Defendant agrees to pay \$10,000.00 to the "Office of the Attorney General" of the State of Kansas at the time of signing this Consent Judgment. Payment will be by certified check.

23. At the time of filing this Journal Entry of Consent Judgment, Plaintiff shall file with the Clerk of the District Court of Shawnee County, Kansas, a Satisfaction of Monetary Judgment indicating that Defendant has made the payment required by paragraph twenty-two (22).

### OTHER PROVISIONS

24. Defendant agrees to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendant acts through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns, or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated, or controlled by Defendant.

25. 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.

26. 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 portions, provisions, or parts.

27. 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.

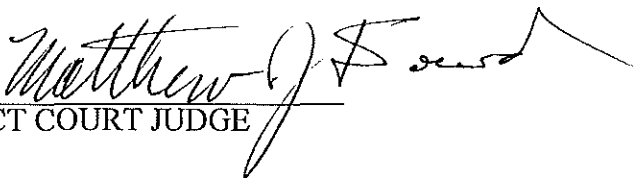
28. From the date of the entry of this Journal Entry of Consent Judgment forward, should the Plaintiff determine that Defendant is in violation of the Journal Entry of Consent Judgment, Plaintiff shall notify Defendant in writing of the specific alleged violation. Defendant shall have fifteen (15) business days from receipt of the notice to bring its business practices into compliance with the Journal Entry of Consent Judgment. Only if Defendant does not bring its business practices into compliance with the Journal Entry of Consent Judgment before the expiration of fifteen (15) days may the Plaintiff apply to this Court for such further Orders to

enforce compliance herewith. Any notices required by this provision shall be sent to: Vacation Break, USA, Inc., c/o Angela Halladay, Esq., 8669 Commodity Circle, Orlando, Florida 32819.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant in favor of Plaintiff in the amount of \$10,000.00.

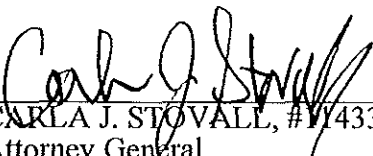
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, including the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

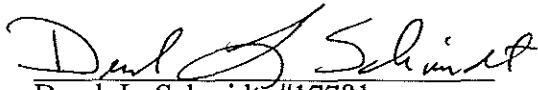
**IT IS SO ORDERED.**

  
DISTRICT COURT JUDGE




Approved by:

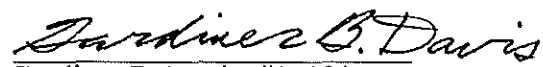
  
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