

E-04-000024

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FILED BY CLERK  
K.S. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS.  
2004 APR 14 P 4: 06

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 6

State of Kansas, ex rel.,  
Phill Kline, Attorney General,  
  
Plaintiff,  
  
QiTel Communications, LLC,  
  
Defendant.

042 541  
Case No. 042

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 14<sup>th</sup> day of April, 2004, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant appears *pro se*.

Whereupon, the parties advise the Court that they have stipulated and agreed to the following matters:

1. Phill Kline 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.*, K.S.A. 50-670 (2002 Supp.) and K.S.A. 50-670a (2002 Supp.).
3. Defendant QiTel Communications, LLC, is a corporation organized under the laws of the state of Texas. The principal office of the corporation is located at 3100 Independence Parkway, Suite 311-415, Plano, Texas 75075.

4. Defendant is a telephone solicitor, as defined by K.S.A. 50-670(a)(3)(2002 Supp.) and has engaged in unsolicited consumer telephone calls within the definition of the K.S.A. 50-670(a)(1-2) (2002 Supp.).

5. The Court has personal and subject matter jurisdiction over the parties for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

6. Defendant stipulates and waives any objection to venue in Shawnee County for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

7. The Plaintiff alleges Defendant engaged in the following unconscionable acts and practices in violation of the Kansas Consumer Protection Act, specifically K.S.A. 50-670 (2002 Supp.) and K.S.A. 50-670a (2002 Supp.):

- a. Defendant made or caused to be made ten (10) unsolicited consumer telephone calls for the purpose of soliciting a sale of property or services, an extension of credit for the sale of property or services or for obtaining information that will or may be used for the direct solicitation of a sale of property or services.
- b. At the time of the unsolicited consumer telephone calls, each of the consumer telephone numbers were registered on the Kansas No-Call list.
- c. Prior to making the unsolicited consumer telephone calls Defendant failed to consult the Kansas No-Call list.

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

9. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be unconscionable in Paragraph Seven (7) of this Consent Judgment. Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order and civil penalties of \$5,000.00 will be imposed for each subsequent violation.

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

11. 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.

12. 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.

13. Defendant agrees to pay \$5,000.00 in civil penalties and investigative fees to the "Office of the Attorney General" of the State of Kansas. This penalty amount shall be paid in five (5) equal installments according to the following payment schedule. The first \$1,000.00 payment was due upon on March 5, 2004. The second \$1,000.00 payment will be due on April 20, 2004. The third \$1,000.00 shall be due on June 5, 2004. The fourth scheduled payment shall be due on July 20, 2004. The final \$1,000.00 will be due on September 7, 2004. The Attorney General's Office reserves the right to revoke and/or void this Consent Judgment if the Defendant fails to make any scheduled payment. If this Consent Judgment is revoked and/or voided the Attorney General's Office reserves the right to bring any action for the above described No-Call violations and retain all fees paid as forfeited. In addition, all payments shall be made by cashier's check, payable to the Office of the Attorney General, and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment.

14. 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.

15. 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.

16. 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.

17. 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 of Plaintiff in the amount of \$5,000.00.

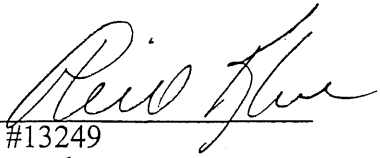
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632 (b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

**IT IS SO ORDERED**

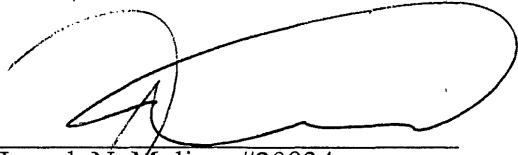
  
DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:



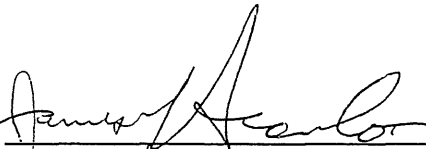
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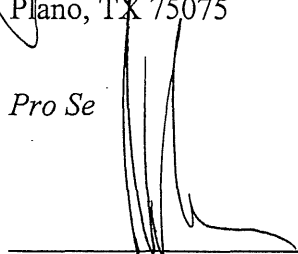
Attorneys for Plaintiff

DEFENDANT:



QiTel Communications, LLC  
James L. Scanlon as Officer, Member, Manager  
3100 Independence Parkway, Suite 311-415  
Plano, TX 75075

*Pro Se*



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Victor Sheu, President  
11469 Olive Blvd., 300  
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