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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 12

2009 SEP 28 P 12:47

STATE OF KANSAS, *ex rel.*)
 STEVE SIX, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 SECURE ACCOUNT SERVICES, LLC)
 d/b/a TELE-PROTECT)
 and)
 LF MARKETING, LLC)
 a/k/a)
 PLATINUM PAYMENT SOLUTIONS, LLC)
 and)
 LLOYD ROBERT FERRY, an individual,)
)
 Defendants.)

Case No. 09 C 950

(Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 25th day of Sept., 2009, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, state of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through Meghan E. Barnds, Assistant Attorney General. Defendant Secure Account Services, LLC d/b/a Tele-Protect and LF Marketing, LLC a/k/a Platinum Payment Solutions, LLC and Defendant Lloyd Robert Ferry, an individual, appear through Alan E. Streit of Larson & Blumreich.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Steve Six 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, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant Secure Account Services, LLC d/b/a Tele-Protect ("Defendant SAS") is a limited liability company organized and existing under the laws of Florida, and registered with the Florida Secretary of State.

4. Defendant SAS has a principal place of business at 111 North 12th Street, Suite 1618 in Tampa, Florida 33602.

5. Defendant SAS has no current certificate of registration filed with the Kansas Secretary of State's Office to operate as a foreign corporation in the State of Kansas.

6. Defendant Lloyd R. Ferry ("Defendant Ferry") has exclusive authority to control the acts and practices of Defendant SAS.

7. All references to Defendants herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

8. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, pursuant to K.S.A. 50-623 *et seq.*

9. Defendants stipulate and admit that venue is proper in this Court.

10. Defendants are suppliers within the definition of K.S.A. 50-624(j).

11. Defendants were engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c), during the relevant time period.

DEFINITIONS

As used herein, the following terms shall mean:

12. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, leaflet, mailer, letter, catalogue, poster, billboard, point-of-purchase display, electronic mail, website, homepage, film, radio, television, or any other medium.

13. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

14. "Consumer," "Client," or "Customer" shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A 50-624.

15. "Defendants" shall mean SAS and Lloyd R. Ferry, along with their employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.¹

¹ The provisions of this Consent Judgment do not apply to Defendant LF Marketing, LLC a/k/a Platinum Payment Solutions, LLC. LF Marketing, LLC was administratively dissolved on September 14, 2007.

16. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "represent," including without limitation "representation," "misrepresent," and "misrepresentation."

ALLEGATIONS

17. Defendants engaged in the advertising, solicitation and sale of consumer protection services (hereinafter "consumer protection services"), including but not limited to: identity theft prevention and resolution, consumer advocacy, fraud recovery assistance, financial asset and credit monitoring, and privacy management services.

18. Defendants initially contact consumers, over the phone, for the purpose of conducting a survey.

19. Defendants conclude the survey by asking if the consumer is interested in receiving more information about protecting his or her identity and finances.

20. Defendants subsequently contact consumers to solicit the sale of Defendants' consumer protection services.

21. The aforementioned advertisements, solicitations and sales are made to consumers across the United States, including consumers in Kansas.

22. The Plaintiff alleges that Defendants, while offering the aforementioned services for sale in Kansas, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

- a. Conducting business in Kansas without registering with the Kansas Secretary of State;

- b. Making misrepresentations regarding Defendants' status, affiliation, or connection, specifically that Defendants were affiliated with consumers' banks or credit unions;
- c. Making misrepresentations regarding the training and experience of Defendants' "consumer advocates" and "fraud specialists," specifically that such employees were "highly trained" and "very successful";
- e. Failing to disclose material facts related to the sale of Defendants' services, specifically the terms of Defendants' refund and cancellation policies, prior to accepting payment from consumers;
- f. Making representations regarding the benefits of Defendants' services, without a reasonable basis for making such representations;
- g. Charging consumers for services without express authorization;
- h. Charging consumers' credit card accounts, for the purchase of Defendants' services, prior to receiving signed confirmations from consumers disclosing in full the terms of the transaction;
- i. Making, or causing to be made, unsolicited consumer telephone calls to numbers listed on the national Do-Not-Call registry;

23. Defendants neither admit nor deny the foregoing Allegations and admit no liability, directly or indirectly, to the allegations or for any damages that may have resulted from their actions. Notwithstanding, Plaintiff and Defendants stipulate and agree that this Consent Judgment resolves the alleged violations set forth in Plaintiff's Petition.

INJUNCTIVE RELIEF

24. Defendants agree to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph twenty-two (22) herein, and Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

25. Defendants agree to refrain from, and to be permanently enjoined from, charging consumers' credit cards prior to receiving written, signed confirmations disclosing in full the terms of the transaction.

26. Defendants agree to refrain from, and to be permanently enjoined from, charging consumers for services without express authorization.

27. Defendants agree to refrain from, and to be permanently enjoined from, making oral representations that, directly or indirectly, contradict terms or language contained in Defendants' written contracts with consumers.

28. Defendants agree to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendants' advertising, promotional materials, sales presentations, or in any manner the nature of the services to be performed, specifically the ability of Defendants to: remove the consumer's personal information from public databases, eliminate the receipt of unwanted telephone and junk mail solicitations, and/or recover funds lost as a result of unauthorized charges.

29. Defendants agree to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendants' advertising, promotional materials, sales presentations, or in any manner the qualifications, training or experience of Defendants' personnel.

30. Defendants agree to refrain from, and to be permanently enjoined from, making unsolicited telephone calls to Kansas consumers with telephone numbers listed on the national Do-Not-Call registry.

31. Defendants agree to, prior to accepting payment from any consumer, clearly and conspicuously disclose Defendants' refund and cancellation policies, including all information the consumer may require to submit a refund or cancellation request.

32. Defendants agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623, *et seq.*

33. Defendants agree to comply with all federal laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically the Telemarketing Sales Rule, 16 C.F.R. 310, *et seq.*

34. Defendants agree to register with the Kansas Secretary of State within twenty (20) days of execution of this Consent Judgment or cease conducting business in the state of Kansas.

35. Defendants agree 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.

36. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendant within ten (10) days of execution of this Consent Judgment.

INVESTIGATIVE FEES AND CIVIL PENALTIES

37. Defendants agree to pay \$5,000.00 in investigative fees and \$15,000.00 in civil penalties to the Office of the Kansas Attorney General, pursuant to K.S.A. §50-632 and §50-636.

38. Defendants agree to pay \$10,000.00 to the Office of the Kansas Attorney General within thirty (30) days of entry of this Consent Judgment, and the remaining \$10,000.00 within sixty (60) days of the entry of this Consent Judgment.

39. Payment shall be made by check and shall be delivered to the Attorney General.

40. Defendants agree to be held jointly and severally liable for payment of all civil penalties and investigative fees.

OTHER PROVISIONS

41. The provisions of this Consent Judgment will be applicable to the Defendants, and every employee, agent or representative of the Defendants.

42. 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.

43. 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.

44. Compliance with this Consent Judgment does not relieve the Defendants 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 his jurisdiction.

45. 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 the Defendants nor shall the Defendants 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.

46. Each of the Defendants' representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendants for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of Defendants. Defendants further represent that they have had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

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 Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff for investigative fees in the amount of \$5,000.00 and civil penalties in the amount of \$15,000.00.

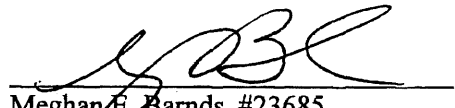
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

Prepared and approved by:

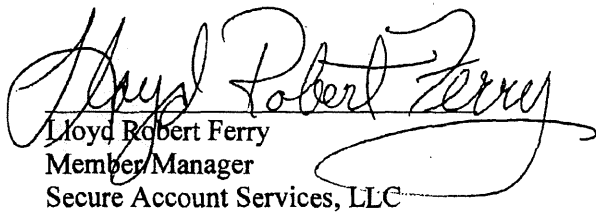
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