



3. Defendant JK Harris & Company (hereinafter "Defendant JKH") is a Limited Liability Company organized and existing under the laws of South Carolina, with its principal place of business at 4995 Lacrosse Rd., Suite 1800, Charleston, South Carolina 29406.

4. Defendant Professional Fee Financing Associates (hereinafter "Defendant PFFA") is a Limited Liability Company organized and existing under the laws of South Carolina, with its principal place of business at 4995 Lacrosse Rd., Suite 1800, Charleston, South Carolina 29406.

5. Defendants stipulate that the Court has subject matter jurisdiction over the case and parties.

6. Defendants stipulate it that venue is proper in this Court.

#### **DEFINITIONS**

As used herein, the following terms shall mean:

7. "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.

8. "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.

9. “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.

10. “Defendants” shall mean JKH and PFFA, 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.

11. “OIC Program” shall mean the program administered by the Internal Revenue Service (IRS) to compromise tax debts, as currently described in IRS Form 656 and the published instructions thereto.

12. “JKH’s OIC Program” shall mean JKH’s providing or offering to provide services in any way related to the filing of an “offer in compromise” with the IRS on behalf of any consumer.

13. “OIC” shall mean “offer in compromise” or “offers in compromise.”

14. “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.”

15. “Eligible for Relief” or “Eligibility for Relief” shall mean the consumer is eligible to submit an OIC because he or she falls into one of the three following categories: 1) doubt exists

that the consumer could every pay the full amount of tax liability owed within the remainder of the statutory period for collection, 2) a legitimate doubt exists that the assessed tax liability is correct and/or 3) the collection of the tax would create an economic hardship on the consumer or would be unfair and inequitable.

### ALLEGATIONS

16. Defendant JKH engages in the solicitation and obtaining of orders for tax debt resolution services to Kansas consumers.

17. In the past, Defendant PFFA engaged in consumer credit sales to assist Kansas consumers in paying for Defendant JKH's services.

18. Defendants deny that they have violated any law, and this Journal Entry is not an admission of a violation of law for any purpose.

19. Plaintiff alleges that Defendant JKH, while engaging in the aforementioned solicitation 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. Representing to consumers that JKH would take immediate action to resolve state and federal tax problems and then failing to take immediate action as promised;
- b. Representing that JKH would provide a specific case specialist to handle customer files from start to finish and then failing to do the same;
- c. Representing that JKH's case specialists would expedite the handling of customer files by contacting customers to clarify and/or resolve discrepancies with their tax records and failing to do the same;
- d. Failing to inform customers when their assigned case specialist was no longer employed by JKH or no longer assigned to handling their files;
- e. Failing to inform consumers that JKH lost their financial disclosure questionnaires and supporting documentation and, as a result, JKH case specialists were not taking steps to resolve consumer's tax issues;

- f. Representing that consumers are eligible for relief through the IRS's "Offer in Compromise" ("OIC") program, without collecting adequate information to substantiate the consumers' eligibility for relief;
- g. Accepting payment from consumers for the preparation of an OIC, without collecting adequate information to substantiate the consumers' eligibility for relief through the IRS's OIC program;
- h. Omitting material facts from its advertisements concerning the circumstances under which consumers would qualify for relief through the IRS's OIC program, including but not limited to, the likelihood of the IRS accepting the consumer's OIC; and
- i. Failure to (1) clearly and conspicuously disclose that refunds are based on the amount of work performed and that the refund consideration is not based upon the success, or lack thereof, of Defendants tax resolution services, and (2) follow the stated policy.

20. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

#### **INJUNCTIVE RELIEF**

21. Defendants agree to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph nineteen (19) 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.

22. Defendants agree to refrain from, and to be permanently enjoined from, representing that Defendants have achieved an "average acceptance" settlement amount, or similar representations, unless such representations are accurate and are neither deceptive nor misleading, and Defendants have prior substantiation for making such claims.

23. Defendants agree to refrain from, and to be permanently enjoined from, representing that Defendants will perform services for consumers in a specific manner, unless

Defendants actually perform those services as represented, and Defendants have prior substantiation for making such claims.

24. Defendants agree to refrain from, and to be permanently enjoined from, representing that consumers are eligible for relief through the IRS's OIC program, unless the consumers actually are eligible for relief under the IRS's OIC program or Defendants have prior substantiation for such claims.

25. Defendants agree to refrain from, and to be permanently enjoined from, charging or accepting payment from a consumer for entering into JKH's OIC program, unless the consumer is eligible for relief through the IRS's OIC program, or Defendants have previously collected information from the consumer substantiating eligibility for relief through the IRS's OIC program, and Defendants clearly and conspicuously disclose that the information provided by the consumer will determine eligibility for the IRS's OIC program and its represented benefits.

26. Defendants agree to refrain from, and to be permanently enjoined from, using advertisements or promotions in which Defendants make representations, expressly or by implication, about Defendants' success rates or about IRS OIC statistics, including consumers' overall eligibility and likelihood of qualifying for the OIC program, unless:

- a. when discussing OIC statistics or a particular case, Defendants incorporate a clear and conspicuous disclaimer which informs consumers that high rates of debt forgiveness are not typical;
- b. when discussing OIC average settlement amounts, Defendants incorporate a clear and conspicuous disclaimer which informs consumers that acceptance amounts for individual offers in compromise are not based upon the national or overall averages of IRS tax debt forgiveness rates;
- c. when discussing OIC statistics or average settlement amounts, or the average number of offers accepted, Defendants incorporate a clear and conspicuous disclaimer which informs consumers that most consumers should not expect to receive a similar result

because an individual consumer's outcome will not necessarily correspond with such averages.

The relevant disclaimer will either be located on the same page as the representation, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation in which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

27. Defendants agree to, prior to charging any consumer, or accepting money from any consumer for the preparation of an OIC, clearly and conspicuously disclose, in writing and orally, that the information provided by the consumer will determine eligibility for the IRS's OIC program.

28. Defendants agree to, prior to charging any consumer, or accepting money from any consumer for the preparation of an OIC, clearly and conspicuously disclose that more often than not, OICs submitted to the IRS are not accepted by the IRS.

29. Defendants agree to, prior to charging any consumer, or accepting money from any consumer for the preparation of an OIC, clearly and conspicuously disclose and explain:

- a. the anticipated stages of work to be performed in connection with the OIC services;
- b. the amount of the total fee allocated to each service;
- c. the refund amounts which can be expected;
- d. which portion of the total fee will actually compromise any work-performed, administrative, or processing fees to be retained by Defendants and which are not refundable; and
- e. that under some conditions consumers may be required to sign a release, and that a refund may be conditioned on the signing of a release.

30. Defendants agree to record each written complaint, arbitration demand, and lawsuit received from a consumer located in Kansas and, upon request by the Attorney General, shall provide a current, full and accurate list of such complaints to the Attorney General that includes: name of complainant; address of complainant; nature of complaint, if any; date of complaint; date of resolution, if any.

31. 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 or this Consent Judgment.

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

#### **CONSUMER RESTITUTION**

33. Defendants agree to pay consumer restitution in the amount of \$8,000.00 (eight thousand dollars) payable by check to the "Office of the Attorney General" of the State of Kansas.

34. In settlement of all consumer claims and complaints asserted by consumers and received by the Office of the Attorney General prior to the date of this Consent Judgment, restitution shall be paid by check and delivered by Defendants to the Office of the Kansas Attorney General upon execution of this Consent Judgment.

35. Such restitution shall be delivered to consumers in a time and manner determined by the Kansas Attorney General.

### **INVESTIGATIVE FEES**

36. Defendants agree to pay investigative fees in the amount of \$7,500.00 (seven thousand, five hundred dollars) payable by check to the "Office of the Attorney General" of the State of Kansas.

37. In settlement of all claims by the Office of the Attorney General for investigative fees incurred in connection with this Consent Judgment, investigative fees shall be delivered to the Attorney General of the State of Kansas upon execution of the Consent Judgment.

### **OTHER PROVISIONS**

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

39. 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.

40. 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.

41. 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.

42. Entering this Consent Judgment does not waive any statutory, regulatory or equitable defenses our counterclaims available to Defendants.

43. 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.

44. Each of Defendants' representatives signing this 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 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.

45. This Consent Judgment supersedes any other agreement between Plaintiff and Defendants, including previous Journal Entries and Assurances of Voluntary Compliance.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the agreement of the parties contained herein is adopted and approved by the Court and any monies owed hereunder by Defendants be paid immediately 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 \$7,500.00 and restitution for the consumers named herein in the amount of \$8,000.00.

**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

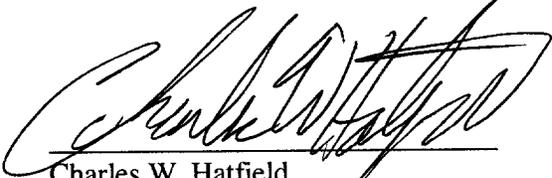
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