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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 12

FILED BY CLERK  
KS DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS

2010 SEP 27 P 3:05

STATE OF KANSAS, *ex rel.* )  
STEVE SIX, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HEARTLAND, INC. )  
and )  
THERESA M. KRUSE, an individual )  
 )  
Defendants. )

Case No. 1DC1340

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

**JOURNAL ENTRY CONSENT JUDGMENT**

NOW on this 27<sup>th</sup> day of Sept., 2010, 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. Defendants appear through the undersigned counsel.

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

**PARTIES, JURISDICTION AND VENUE**

1. Steve Six is the duly appointed, qualified and acting Attorney General for 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 Heartland, Inc. (“Defendant Heartland”) has a principal place of business at 3829 71<sup>st</sup> Street, Suite A in Urbandale, Iowa 50322.

4. Defendant Theresa M. Kruse (“Defendant Kruse”) is an individual and serves as the president for Defendant Heartland.

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

6. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

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

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

9. Defendants engage in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

10. Defendants act as “telephone solicitors” in Kansas, as that term is defined by K.S.A. 50-670(a)(3).

11. Defendants engage in “consumer telephone calls” in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

### **ALLEGATIONS**

12. Defendants engage in the advertising, solicitation and sale of magazine subscriptions and services related to the fulfillment of such subscriptions.

13. Defendants contact Kansas consumers over the phone to solicit the sale of the aforementioned products and services.

14. Plaintiff alleges that Defendants, while offering the aforementioned products 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. Making, or causing to be made, unsolicited consumer telephone calls to Kansas consumers whose telephone numbers are listed on the national Do-Not-Call registry, in violation of K.S.A. § 50-670a;

15. 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**

16. Defendants agree to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph fourteen (14), 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.

17. Defendants agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. § 50-623, *et seq.* and the Kansas No-Call Act, K.S.A. § 50-670, *et seq.*

18. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division pertaining to the KCPA violations alleged herein.

19. 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.

20. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment, or within fifteen (15) days after any person assumes such position or responsibilities.

#### **INVESTIGATIVE FEES AND CIVIL PENALTIES**

21. Defendants agree to pay to the Office of the Kansas Attorney General four thousand, five hundred dollars (\$4,500.00) in investigative expenses, pursuant to K.S.A. § 50-632(a)(4).

22. Defendants agree to pay to the Office of the Kansas Attorney General nineteen thousand, five hundred dollars (\$19,500.00) in civil penalties for violations of the Kansas No-Call Act, pursuant to K.S.A. § 50-670(g) and § 50-670a(m).

23. Payment shall be made in the form of a cashier's check, money order or other certified funds, made payable to the Office of the Kansas Attorney General.

24. Payment shall be delivered to the Attorney General within thirty (30) days of signing this Consent Judgment.

25. Defendants agree to be held jointly and severally liable for the amounts sets forth in paragraphs twenty-one (21) and twenty-two (22).

26. Defendants agree that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

## OTHER PROVISIONS

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

28. 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.

29. 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.

30. 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.

31. The parties understand that this Consent Judgment shall not be construed to limit or reduce any method of cancellation provided by law, or any obligation by Defendants to comply therewith, and no waiver or reduction of a consumer's rights of cancellation under law shall result.

32. 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.

33. Each of the Defendants' representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. 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 in the amount of \$24,000.00.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants pay all costs associated with this action.

**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

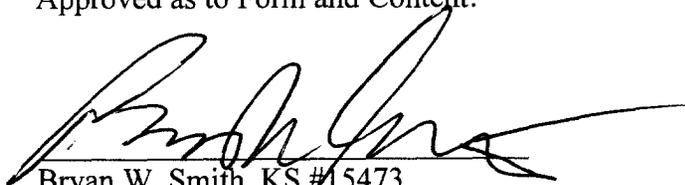
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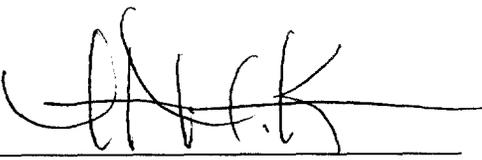
PLAINTIFF:

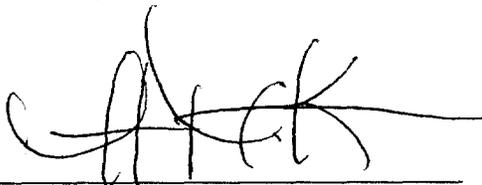
  
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(785) 296-3751  
*Attorney for Plaintiff*

DEFENDANTS:

Approved as to Form and Content:

  
\_\_\_\_\_  
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(785) 234-2453  
*Attorney for Defendant Heartland Inc.*

  
\_\_\_\_\_  
Theresa M. Kruse, President  
Heartland, Inc.

  
\_\_\_\_\_  
Theresa M. Kruse, Individually