

Meghan E. Stoppel, #23685  
Assistant Attorney General  
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120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
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FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS  
2012 DEC 12 P 3:45

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**  
**Division 1**

STATE OF KANSAS, *ex rel.* )  
DEREK SCHMIDT, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
VANDELL COMMUNICATION LLC )  
a/k/a VANDALL COMMUNICATIONS )  
f/k/a MITCHELL COMMUNICATION )  
GROUP LLC )  
and )  
TONY MITCHELL, an individual )  
 )  
Defendants. )

Case No. 11 C 1114

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

**JOURNAL ENTRY CONSENT JUDGMENT**

NOW on this 12 day of December, 2012, 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.* Derek Schmidt, Attorney General, appears by and through Meghan E. Stoppel, Assistant Attorney General. Defendants appear by and through James G. Chappas of James G. Chappas, Chartered.

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

## **PARTIES, JURISDICTION AND VENUE**

1. Derek Schmidt is the duly elected, 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 Vandell Communication LLC a/k/a Vandall Communications f/k/a Mitchell Communication Group, LLC ("Defendant Vandell Communication") has a principal place of business at 17241 Wausau Avenue, South Holland, Illinois 60473.

4. Defendant Tony Mitchell ("Defendant Mitchell") is an individual and serves as the managing member and registered agent for Defendant Vandell Communication.

5. Defendant Mitchell resides at 325 Royal Oak Drive, Steger, Illinois 60475.

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

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

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

## **ALLEGATIONS**

9. Defendants acted as a "telephone solicitor(s)" in Kansas, as that term is defined by K.S.A. 50-670(a)(3).

10. Defendants engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

11. Defendants solicited Kansas consumers by phone, on behalf of VIP Software KC LLC (“VIP”), for the purpose of asking the consumers to attend a VIP presentation. VIP solicited consumers who attended those presentations to purchase a product or service.

12. Plaintiff alleges that Defendants, while conducting the aforementioned solicitations in Kansas, engaged in acts and practices in violation of the Kansas No Call Act, K.S.A. 50-670 *et seq.*, 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;
- b. failing to identify the business on whose behalf Defendants were soliciting, in violation of K.S.A. 50-670(b)(2);
- c. failing to identify the purpose of the call to Kansas consumers, in violation of K.S.A. 50-670(b)(3);
- d. failing to consult the National Do-Not-Call Registry prior to placing telemarketing calls to Kansas consumers for the solicitation of VIP’s products and services, in violation of K.S.A. 50-670a(b).

13. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement. Defendants neither admit nor deny the foregoing allegations. Notwithstanding, Plaintiff and Defendants stipulate and agree that this Consent Judgment resolves the alleged violations set forth in Plaintiff’s Petition.

**INJUNCTIVE RELIEF**

14. Defendants agree to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph twelve (12), 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.

15. 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.*

16. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division.

17. 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.

18. 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**

19. Defendants agree to pay to the Office of the Kansas Attorney General ten thousand dollars (\$10,000.00) in investigative fees and civil penalties for violations of the Kansas No-Call Act, pursuant to K.S.A. 50-670(g) and 50-670a(m).

20. Defendants agree to pay the aforementioned fees and penalties in eight (8) installments as follows:

- a. Defendants shall pay \$3,000.00 to the Office of the Kansas Attorney General at the time of signing this Consent Judgment. The remaining \$7,000.00 shall be paid

in seven (7) equal installments of \$1,000.00 due on or before the first day of each month thereafter, beginning on January 1, 2013.

b. Defendants agree that time is of the essence for each of the aforementioned payments and shall be responsible for the timely submission of each payment.

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

Office of the Kansas Attorney General  
ATTN: Meghan E. Stoppel, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

22. Defendants agree to be held jointly and severally liable for the entire amount set forth in paragraph nineteen (19).

23. Notwithstanding any other provision of this Consent Judgment, Defendants agree that, if they fail to meet the payment obligations set forth in paragraph twenty (20), the facts as alleged in the State of Kansas' Petition filed in this matter shall be taken as true in any subsequent litigation filed by the State of Kansas to enforce its rights pursuant to this Consent Judgment, including, but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding.

24. 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 and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

#### **OTHER PROVISIONS**

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

26. 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.

27. 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.

28. 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.

29. 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.

30. Each of the Defendant's 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 \$10,000.00

**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.**

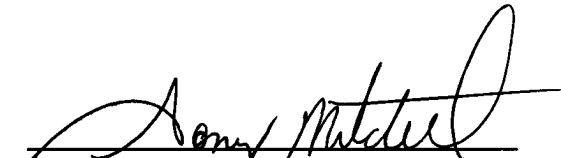
  
DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

  
Meghan E. Stoppel, KS #23685  
Assistant Attorney General  
Office of Kansas Attorney General  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612-1597  
(785) 296-3751  
*Attorney for Plaintiff*

DEFENDANTS:

  
Tony Mitchell, Managing Member  
Vandell Communication LLC

  
Tony Mitchell

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James G. Chappas, #11988  
James G. Chappas, Chartered  
1610 SW Topeka Blvd.  
Topeka, Kansas 66612  
(785) 232-0920  
*Attorney for Defendants*



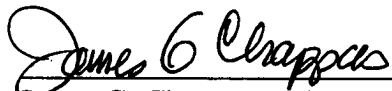
DEFENDANTS:

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Tony Mitchell, Managing Member  
Vandell Communication LLC

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Tony Mitchell



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*Attorney for Defendants*