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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2016 MAY -4 A 10:26

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 7

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
RICHARD T. SCHWARTZ, an individual)
d/b/a)
SAT/ACT SCHOLASTIC ACHIEVEMENT)
a/k/a)
SAT/ACT EDUCATIONAL TESTING)
)
Defendant.)

Case No. 2015-CV-000980

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 3rd day of May, 2016, the parties' 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. Defendant appears by and through the undersigned counsel.

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 Richard T. Schwartz ("Defendant") is an individual residing at 12946 Carnesi Drive, Rancho Cucamonga, California 91739.

4. Defendant, at all times relevant hereto, conducted business under the names SAT/ACT Scholastic Achievement and SAT/ACT Educational Testing.

5. All references to Defendant herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, members, managers, agents, assigns, and all other persons or entities acting in concert with him or on his behalf, including his predecessors, subsidiaries, affiliates, and successors.

6. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

7. Defendant stipulates and admits that venue is proper in this Court.

ALLEGATIONS

8. Defendant has acted as a "supplier" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-624(l).

9. Defendant has engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-624(c).

10. At all times relevant to Plaintiff's Petition, Defendant acted as a "telephone solicitor" in Kansas, as that term was defined by K.S.A. 2002 Supp. 50-670(a)(3) and is currently defined by K.S.A. 2014 Supp. 50-670(a)(4).

11. At all times relevant to Plaintiff's Petition, Defendant engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-670(a)(1).

12. At all times relevant to Plaintiff's Petition, Defendant contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant's educational products and services.

13. At all times relevant to Plaintiff's Petition, and while soliciting Kansas consumers, Defendant engaged in acts and practices in violation of the Kansas No Call Act, K.S.A. 2014 Supp. 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. 2002 Supp. 50-670a(e) and K.S.A. 2014 Supp. 50-670a(c);
- b. failing to consult the National Do Not Call Registry prior to making unsolicited consumer telephone calls in Kansas, in violation of K.S.A. 2002 Supp. 50-670a(b) and K.S.A. 2014 Supp. 50-670a(a);
- c. failing to identify himself while making unsolicited consumer telephone calls to Kansas consumers, in violation of K.S.A. 2002 Supp. 50-670(b)(1) and K.S.A. 2014 Supp. 50-670(b)(1); and
- d. failing to identify the business on whose behalf Defendant was soliciting while making unsolicited consumer telephone calls to Kansas consumers, in violation of K.S.A. 2014 Supp. 50-670(b)(2).

14. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendant of a violation of the Kansas No Call Act or any other applicable law or regulation as alleged by Plaintiff. Notwithstanding, Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and solely for the purpose of settlement.

INJUNCTIVE RELIEF

15. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph thirteen (13), and Defendant agrees that engaging

in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

16. Defendant agrees to refrain, and to be permanently enjoined, from making, participating in, or assisting others in making “consumer telephone calls” in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-670(a)(1) and amendments thereto.

17. Defendant agrees 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. Defendant agrees to comply with the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, and all federal regulations promulgated thereby, including the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*

19. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remediating any complaints filed with the Consumer Protection Division.

20. Defendant agrees 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.

21. Defendant shall not cause or encourage third parties, nor knowingly permit third parties acting on his behalf, to engage in practices from which Defendant is prohibited by this Consent Judgment.

22. Defendant shall require his independent contractors comply with the terms set forth in this Consent Judgment.

23. Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

24. Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through his employees, agents, representatives, affiliates, assignees and successors.

INVESTIGATIVE FEES AND CIVIL PENALTIES

25. Judgment is hereby entered in favor of Plaintiff and against Defendant, in the amount of ten thousand dollars (\$10,000.00) for the payment of 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). *Provided, however,* the monetary judgment shall be suspended against Defendant as long as the Court makes no finding, as provided in the following section of this Consent Judgment titled "Right to Reopen," that Defendant materially misrepresented or omitted the nature, existence or value of any asset.

26. Defendant hereby agrees to furnish to the Attorney General its taxpayer identifying number (social security number or employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Judgment.

RIGHT TO REOPEN

27. Plaintiff's agreement to this Consent Judgment is expressly premised upon the truthfulness, accuracy, and completeness of Defendant's financial condition, as represented in the sworn financial statements provided by Defendant to the Attorney General on January 6 2016, which contain material information upon which Plaintiff relied in negotiating and agreeing to the terms of this Consent Judgment. Defendant signed and dated these statements on December 28, 2015.

28. If, upon motion by the Attorney General to the Court, the Court finds that Defendant failed to disclose any material asset, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in Defendant's Financial Statements, the suspension of the monetary judgment as to the Defendant will be terminated and the entire judgment amount of ten thousand dollars (\$10,000.00) shall become immediately due and payable by the Defendant, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

29. Defendant agrees 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.

30. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

OTHER PROVISIONS

31. 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.

32. 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.

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

34. 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 Defendant nor shall the 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.

35. This Consent Judgment represents the entire agreement between Plaintiff and Defendant, and there are no representations, agreements, arrangements, or understandings, oral

or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

36. Nothing in this Consent Judgment shall be construed to create, waive or limit any private right of action.

37. 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. Each Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

38. This Consent Judgment may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

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 and in favor of Plaintiff in the amount of \$10,000.00, subject to the suspension of execution provisions as outlined in paragraph 25 herein above.

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.



The Honorable Franklin Theis
District Court Judge

Prepared and approved by:

PLAINTIFF:



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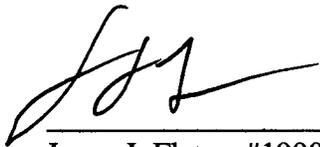


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