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TOPEKA, KS  
2017 MAY 17 A 8:30

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 3

STATE OF KANSAS, *ex rel.* )  
Derek Schmidt, Attorney General, )  
 )  
Plaintiff, )  
v. )  
 )  
Jacobs Marsh, LLC )  
 )  
And )  
 )  
Joseph Arena, An Individual )  
Defendants. )

Case No. 2017-CV-324

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

CONSENT JUDGMENT

NOW, on this 16<sup>th</sup> day of May, 2017, comes on for consideration Plaintiff's Petition to Approve Consent Judgment. The Plaintiff State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Kathryn Carter. Defendant appears by and through Richard G. Guinn, Colantuono Bjerg Guinn, LLC.

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

PARTIES

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas. 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.*

2. Jacobs Marsh, LLC has a principal place of business located at 5500 Main Street, Suite 101, Williamsville, NY 14221.

3. Joseph Arena is the owner of Jacobs Marsh, LLC, and responsible for all day-to-day business and transaction decisions for Jacobs Marsh, LLC.

4. The term Defendants, as used herein, shall mean Jacobs Marsh, LLC, and Joseph Arena.

5. All references to Defendants herein include acts individually, in concert, or by Jacobs Marsh, LLC, the members, the managing member(s), or through employees, agents, representatives, affiliates, assignees and successors to either Defendant.

#### **JURISDICTION AND VENUE**

6. All previous paragraphs are incorporated by reference.

7. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

8. Defendants are subject to the jurisdiction of the Court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a).

9. Defendants have submitted to the Jurisdiction of the State of Kansas through the filing of lawsuits against Kansas residents and the commission of various acts and inactions which violate the Kansas Consumer Protection Act (hereinafter the KCPA) in the State.

10. Venue is proper in the District Court of Shawnee County Kansas pursuant to K.S.A. 50-638(b).

## ALLEGATIONS

11. All of the foregoing paragraphs are hereby incorporated by reference.
12. At all times relevant hereto, and in the ordinary course of business, Defendants have acted as suppliers as defined by K.S.A. 50-624(l).
13. At all times relevant hereto, and in the ordinary course of business, Defendants have engaged in consumer transactions as defined by K.S.A. 50-624(c).
14. At all times relevant hereto, Defendants either directly or indirectly or through servicing contracts or otherwise undertook the collection of payments from or enforcement of rights against Kansas consumers/debtors in connection with more than one thousand (1,000) debts and obligations which originated as supervised loans, as defined by K.S.A.16a-1-301(46).
15. Pursuant to K.S.A.16a-2-301 and K.S.A. 16a-2-302 Defendants were required to obtain a supervised lenders license from the Office of the State Bank Commissioner of Kansas, or apply for and obtain a supervised lenders license within three months of beginning to collect or enforce that type of account in Kansas.
16. At all times relevant hereto, Defendants did not apply for or obtain a supervised lenders license from the Office of the State Bank Commissioner of Kansas.
17. Defendants never obtained or applied for a Kansas supervised lenders license that would allow it to take assignment of or enforce debts, rights, obligations, or accounts which originated as supervised loans.
18. Defendants on multiple occasions took advantage of the debtors'/consumers' inability reasonably to protect their interests because of their ignorance or inability to understand the language of the agreement, thereby violating the provisions of K.S.A. 50-627(b)(1).



19. Defendants made false, misleading, or untrue representations to numerous Kansas consumers on multiple occasions concerning its legal authority to collect debts that originated as supervised loans, thereby violating provisions of K.S.A. 50-626(b)(1)(B).

20. Defendants failed to inform and/or suppressed, omitted or concealed the material fact or failed to state, concealed, suppressed or omitted the material fact that Jacobs Marsh, LLC had no legal authority to enforce, in the State of Kansas, debts that arose from supervised loans, all of which are material facts, thereby violating provisions of K.S.A. 50-626(b)(3).

### **FINDINGS**

21. Each instance in which Defendants made a false, misleading, or untrue representation of fact, or failed to inform and/or suppressed, omitted or concealed a material fact or failed to state, concealed, suppressed or omitted any material fact in the course of a consumer transaction constitutes and is declared to be a separate and distinct deceptive act and practice in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1).

22. Each instance in which Defendants collected payments from or took enforcement action against a Kansas consumer for a debt or obligation which originated as a supervised loan, as defined by K.S.A. 16a-1-301(46) without having obtained or applied for a license therefor, as required by to K.S.A.16a-2-301 and K.S.A. 16a-2-302, constitutes and is declared to be an unconscionable act or practice in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1).

### **INJUNCTIVE AND REMEDIATIVE RELIEF**

23. Defendants agree to refrain, and be permanently enjoined, from all collection or enforcement activities in the State of Kansas on any account arising from a debt or obligation which originated as a supervised loan, as defined by K.S.A. 16a-1-301(46).

24. Defendants agree to refrain, and be permanently enjoined, from practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

25. Defendants agree to, consistent with local court rules and State law, seek the dismissal of all pre-judgment collections litigation which was initiated by Defendants and remains pending in a Kansas court as of the effective date of this judgment.

26. Defendants agree to file Satisfactions of Judgment in each case of collections litigation in which Defendants have obtained a judgment in a Kansas court.

27. Defendants agree to not seek to enforce, collect, sell or otherwise transfer any judgment from a Kansas court that it has obtained prior to the effective date of this Consent Judgment.

28. Defendants agree to not issue IRS Form 1099 in connection with any act taken pursuant to this Consent Judgment.

29. Defendants agree to not seek to enforce, collect, sell or otherwise transfer any Kansas consumer's debt or obligation which it has obtained which originated as a supervised loan, as defined by K.S.A.16a-1-301(46).

30. Defendants agree to request that each of the consumer credit reporting agencies that compiles and maintains files on consumers on a nationwide basis amend, delete or suppress information in the public record section of such files regarding all actions in collections litigation cases initiated by Defendants involving Kansas consumers.

31. Defendants agree to not reinstitute collections litigation in any court in the State of Kansas, in any matter.

32. Defendants agree to provide to Plaintiff, within 180 days after the effective date of this judgment, reports detailing the implementation of remediative relief, and again every 180

days thereafter until the remediative relief is complete. Said reports shall be submitted in electronic format, preferably Microsoft Excel, and shall include:

- a. Debtor's name, court case number, venue, action taken by Defendants, dollar amount of debt abandoned, ref. paragraphs 25 and 26;
- b. Name of consumer credit reporting agency and specific details of Defendants' request, ref. paragraph 30.

33. The remediative relief shall be complete within one (1) year of the effective date of this judgment.

34. 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.

#### **MONETARY RELIEF**

35. Defendants agree to refund to consumers, within 30 days of the effective date of this Consent Judgment, all payments made on accounts in their portfolio, specifically those payments received on or after June 7, 2012, totaling \$7,572.74. Restitution shall be made by issuing checks to those consumers at issue and submitting to Plaintiff a spreadsheet providing consumer names, contact information and amount of payment issued within 30 days thereafter.

36. Defendants agree to return to the payor any payment received after the effective date of this Consent Judgment from or on behalf of any Kansas consumer in connection with a debt or obligation which originated as a supervised loan, as defined by K.S.A.16a-1-301(46).

37. Defendants agree to pay reasonable expenses and investigative fees as provided by K.S.A. 50-636(c) in the amount of \$7,500, by paying three (3) monthly payments of \$2,500 to begin upon execution of this Consent Judgment;



38. Defendants agree that all unpaid restitution, fees, and/or penalties shall be non-dischargeable in any filing for bankruptcy.

39. Defendants agree that civil penalties in the amount of \$150,000 shall be assessed jointly and severally, for violations of the Kansas Consumer Protection Act, both as alleged in the petition filed herein and revealed during the course of the investigation conducted by Plaintiff.

40. The parties agree that the civil penalties assessed in this matter shall be suspended on the condition that Defendants comply with the terms of this Consent Judgment and on the condition that the financial statements provided by Defendants to Plaintiff in the course of negotiating this Consent Judgment are truthful and accurate.

41. Defendants agree that the suspension of the judgment for civil penalties in the amount of \$150,000 shall be lifted and set aside as to both Defendants if, upon motion by Plaintiff, the Court finds that either Defendant has violated any term of this Consent Judgment.

42. Defendants agree that the suspension of the judgment for civil penalties in the amount of \$150,000 shall be lifted and set aside as to both Defendants if, upon motion by Plaintiff, the Court finds that the financial statement provided by either Defendant to Plaintiff in the course of negotiating this Consent Judgment failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission.

43. Defendants waive any defense or objection to the Court's considering and entering into evidence the financial statements provided by Defendants to Plaintiff in the course of negotiating this Consent Judgment if proffered in the course of enforcing the terms of this Consent Judgment.

44. If the suspension of the judgment for civil penalties is lifted, the judgment becomes immediately due as to both Defendants, jointly and severally, in the amount of \$150,000, plus interest computed from the effective date of this Consent Judgment.

#### **OTHER PROVISIONS**

45. The signature portion of this Consent Judgment may be executed in counterparts and by fax signatures, and will have the same effect as if done in person and in one document.

46. 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.

47. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall Plaintiff be precluded from taking appropriate legal action to enforce civil or criminal statutes under Plaintiff's jurisdiction.

48. This Consent Judgment shall not be construed as an approval of or sanction by Plaintiff of the business practices of Defendants nor shall Defendants represent the decree as such approval. Any failure by Plaintiff to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

49. Each Defendant or representative for Defendant signing this Consent Judgment warrants that he has been duly authorized by the Defendant for whom he acts to agree to and to execute this Consent Judgment on behalf of that Defendant. Defendants further represent that they have had an opportunity to consult with and obtain the advice of private legal counsel prior to entering in this Consent Judgment.



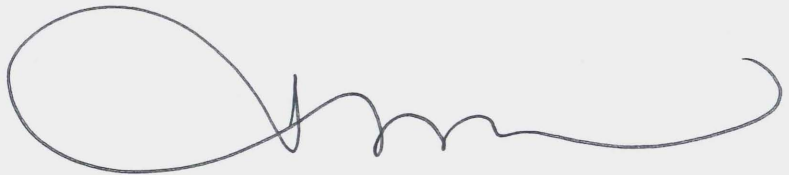
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants and in favor of Plaintiff in the amount of \$7,572.74 restitution, and in the amount of \$7,500 investigative fees.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants and in favor of Plaintiff in the amount of \$150,000 civil penalties, which judgment for civil penalties shall be suspended subject to the terms recited 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. 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 guidance as may be necessary or appropriate for the modification of any of the provisions hereof and for the enforcement of the provisions hereof.

**IT IS SO ORDERED.**



Hon. Teresal. Watson  
District Court Judge

Respectfully submitted,



Derek L. Schmidt, #17781

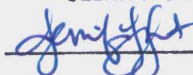


STATE OF KANSAS, COUNTY OF SHAWNEE, S.S.

I hereby certify the above and foregoing to be a true and correct copy, the original of which is filed and entered of record in the court

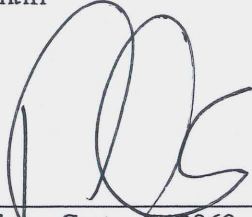
Dated May 17, 2017

CLERK of the DISTRICT COURT

By 

DEPUTY

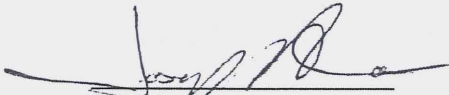
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Plaintiff



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Attorney for Plaintiff

Approved and agreed:



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Joseph Arena  
Individually and as  
Owner of Jacobs Marsh, LLC



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Richard G. Guinn  
Colantuono Bjerg Guinn LLC  
7015 College Blvd, Suite 375  
Overland Park, KS 66211  
Attorney for Defendants