

JP

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

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 12

2011 MAY -9 P 12:20

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
VOICEMAIL DIRECT USA, LLC)
a/k/a)
VOICEMAIL DIRECT)
and)
INTELICOM MESSAGING, LLC)
and)
CONXTR, LLC)
)
Defendants.)

Case No. 10 C 581

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 6th day of May, 2011, 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 (the "Plaintiff"), appears by and through Meghan E. Stoppel, 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. Derek Schmidt is the Attorney General of the State of Kansas.
2. The Attorney General contends that its authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant Voicemail Direct USA, LLC a/k/a Voicemail Direct (“Defendant VD”) is a limited liability company organized and existing under the laws of Nevada, and registered with the Nevada Secretary of State.

4. Defendant Intelicom Messaging, LLC (“Defendant Intelicom”) is a limited liability company organized and existing under the laws of Nevada, and registered with the Nevada Secretary of State.

5. Defendant Intelicom and Defendant VD share an address of 701 North Green Valley Parkway, Suite 200 in Henderson, Nevada 89074.

6. Defendant Conxtr, LLC (“Defendant Conxtr”) is a limited liability company organized and existing under the laws of Nevada, and registered with the Nevada Secretary of State.

7. Defendant Conxtr has an address of 7251 West Lake Mead Boulevard, Suite 300 in Las Vegas, Nevada 89128.

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

9. For settlement purposes only, the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, pursuant to K.S.A. 50-623 *et seq.*

10. For settlement purposes only, venue is proper in this Court.

11. For settlement purposes only, Defendants are suppliers within the definition of K.S.A. 50-624(j).

12. For settlement purposes only, Defendants are engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

13. Defendants do not admit, and specifically deny, all the allegations set forth in Plaintiff's Petition filed in the action, and nothing contained herein shall be used as evidence or as any admission of fact or law in any other action or proceeding. Entry into this Consent Judgment does not constitute or result from any finding of wrongdoing by the Court or by the Attorney General against any of Defendants.

DEFINITIONS

14. "Consumer," "Client," or "Customer" shall mean any individual, husband and wife, sole proprietor, or family partnership who is a resident of the State of Kansas and who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A 50-624.

15. "Cramming" means the addition of charges to a consumer subscriber's telephone bill for services which were neither ordered nor desired by the consumer subscriber.

16. "Defendants" shall mean Defendant Voicemail Direct USA LLC, Defendant Intelicom Messaging LLC, Defendant Conxtr LLC and their employees, directors, officers, owners, members, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

17. "Defendants' Products and Services" shall mean any voicemail service or any other enhanced service offered by Defendants, the charge for which is billed or caused to be billed on a consumer's landline telephone bill.

18. "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.”

ALLEGATIONS

19. Plaintiff alleges that Defendants have engaged in the solicitation and sale of Defendants’ Products and Services to Kansas consumers through the Internet, including but not limited to the following websites:

- a. www.voicemaildirectusa.com
- b. www.intelicomessaging.com
- c. www.conxtr.com.

20. Plaintiff alleges that Defendants, while offering Defendants’ Products and Services, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626 and 50-627. Plaintiff alleges the following:

- a. Defendants knowingly placed or caused to be placed charges on Kansas consumers’ telephone bills for Defendants’ voicemail service, without the consumers’ knowledge or authorization, in violation of K.S.A. 50-626(b);
- b. Defendants falsely stated that Kansas consumers were obligated to remit payment for Defendants’ voicemail service, by causing to be placed charges on Kansas consumers’ telephone bills knowing, or with reason to know, that the aforementioned consumers were under no such obligation to Defendants, in violation of K.S.A. 50-626(b)(8);
- c. Defendants collected payment from Kansas consumers, via the consumers’ telecommunications carriers and Enhanced Services Billing Inc. (“ESBI”), for services never authorized, requested or used by Kansas consumers, in violation of K.S.A. 50-627(a).

21. Defendants do not admit, and specifically deny, each and all of the above allegations but agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement only.

INJUNCTIVE RELIEF

22. Defendants agree to be permanently enjoined from engaging in those acts and practices set forth in paragraph twenty (20) 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.

23. Defendants agree to be permanently enjoined from commencing billing or payment collection from any Kansas consumer when the consumer never ordered, authorized or otherwise affirmatively requested Defendants' Products and Services, if the Defendants knew or should have known that the charge being billed or collected was not expressly authorized by that consumer based upon Defendants' validation procedures in place at that time.

24. Defendants agree to be permanently enjoined from making any express or implied misrepresentation of material fact, orally or in writing, including but not limited to:

- a. Any misrepresentation that any Kansas consumer is obligated to pay for the purchase of Defendants' Products and Services when the consumer did not expressly authorize the purchase;
- b. Any misrepresentation that the consumer has authorized a purchase of Defendants' Products and Services.

25. Defendants shall send electronic notification to all Kansas consumers, which shall be followed by a call to the telephone number provided to Defendants by such Kansas consumers, prior to the initiation of billing for Defendants' Products and Services, notifying each consumer of the charges incurred and the method by which the consumer may cancel any order placed for Defendants' Products and Services. The electronic notification shall be emailed to the email address provided by the Kansas consumer at the time of purchasing Defendants' Products and Services.

26. Defendants agree to implement a record-keeping system with the capability of logging and compiling cramming complaints from Kansas consumers, which include at a minimum:

- a. The consumer's name, telephone number and amount paid or allegedly owed by the consumer;
- b. A dated copy of the written complaint or refund request, if any, and records reflecting the date and content of any complaint or refund request made by the consumer;
- c. The nature and result of any investigation or action taken by Defendants, or their representatives, concerning the complaint, including the date on which Defendants issued a refund, if any.

Defendants' personnel shall be trained to recognize and categorize cramming complaints. A consumer shall be considered to make a cramming complaint if the consumer asserts that he/she did not authorize the charge for Defendants' Products and Services.

27. Defendants' managers shall regularly review reports, generated by the record-keeping system, together with reports of cramming complaints that Defendants receive either from Defendants' billing aggregators or from a local exchange carrier, to identify and address any problems with Defendants' verification and account activation process, and to ensure that consumer complaints are being properly recorded in Defendants' record-keeping system.

28. If during any calendar month, Defendants receive complaints of alleged cramming from Kansas consumers being billed on Defendants' behalf where the total number of such complaints (regardless of the entity to whom the complaint is made) exceeds the greater of (i) two percent (2%) of the aggregate number of Kansas consumers being billed on Defendants' behalf for such month or (ii) seven (7) complaints, Defendants shall take reasonable and appropriate measures to address the problem, which shall include the following:

- a. Investigating to obtain an explanation for the complaint level;
- b. Implementing an action plan to reduce the complaint level, such as enhanced monitoring of solicitations and verifications;
- c. Reporting the number of complaints and Defendant's proposed action plan to the Office of the Kansas Attorney General.

29. 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.*

30. 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.

31. Defendants agree to respond to all Kansas consumer complaints in good faith and in a reasonable, timely manner. Defendants further agree to issue a full refund to any Kansas consumer who has not previously been fully refunded and who alleges that an unauthorized charge was placed on his or her landline telephone bill by Defendants.

32. 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.

33. 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 direct 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, for a period of five (5) years from the date of entry of this Judgment.

INVESTIGATIVE FEES AND COSTS

34. Defendants agree to pay \$25,000.00 in investigative fees and associated costs to the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632.

35. Payment shall be made, at the time of signing this Consent Judgment, in the form of a check 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 10th Ave, 2nd Floor
Topeka, Kansas 66612

36. Defendants agree to be held jointly and severally liable for the amounts set forth in paragraph thirty-four (34) and thirty-five (35).

37. Defendants agree that all unpaid fees and costs shall be non-dischargeable in any filing for bankruptcy, pursuant to the United States Bankruptcy Code, 11 U.S.C 523(a)(2)(A) and (a)(7), due to the nature of the alleged conduct underlying this settlement.

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 sole 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. 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.

43. 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 THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants are enjoined from the acts and practices set forth in paragraph twenty (20) and that Defendants agree to implement the corrective and preemptive requirements as outlined in paragraphs twenty-two (22) through thirty-three (33).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants and in favor of Plaintiff for investigative fees and costs in the amount of \$25,000.00.

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

Prepared and approved by:

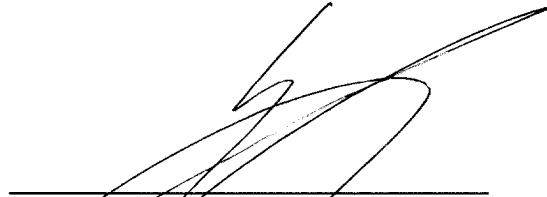
PLAINTIFF:




Meghan E. Stoppel, #23685
Assistant Attorney General
Office of the Kansas Attorney General
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612
(785) 296-3751

Attorney for Plaintiff


DEFENDANTS:



President
Voicemail Direct USA, LLC
Intelicom Messaging, LLC
Conxtr, LLC



Christine Wawrynek
Klein Zelman Rothermel LLP
485 Madison Ave., 15th Floor
New York, New York 10022
(212) 935-6020
Attorney for Defendants, Pro Hac Vice



Clinton E. Patty, #18912
Frieden, Unrein, Forbes & Biggs LLP
555 S. Kansas Ave., Suite 303
Topeka, Kansas 66601
(785) 354-1100
Attorney for Defendants