
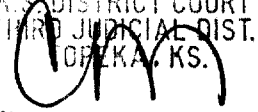


Joseph N. Molina, #20934
Assistant Attorney General
Office of the Attorney General
120 SW Tenth Street, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751


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U.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.

2006 APR 25 P 3:44

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Div. 9

STATE OF KANSAS

Plaintiff,

v.

**YELLOW PAGES, INC.,
d/b/a www.YellowPagesInc.com,
ELECTRONIC DIRECTORIES
COMPANY, LLC, and JOHN WURTH**

Defendants.

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Case # 06-C-609

JOURNAL ENTRY OF CONSENT JUDGMENT

On this date, came for hearing the above entitled and numbered cause, in which THE STATE OF KANSAS is Plaintiff and YELLOW PAGES, INC., a Nevada corporation, d/b/a www.YellowPagesInc.com, ELECTRONIC DIRECTORIES COMPANY, LLC, a California limited liability company, and JOHN WURTH are Defendants.

I.

ALLEGATIONS

The State of Kansas alleges that Defendants violated the Kansas Consumer Protection Act, specifically K.S.A. 50-6,103(c)(4) by sending solicitation forms to consumers in Kansas consisting of a check; that the check

was made out to the individual, small business or non-profit to whom it was sent; that the check was part of what was described as an “instant cash back offer;” that the front of the check was devoid of any indication that the mailing was an offer for services or that by cashing the check, the consumer was contracting for services; that where there was an indication that the check might be more than it appeared on the surface, the information provided was vague and sketchy; that on the back of the check and on a separate disclosure statement, the solicitations contained disclosures regarding the services offered, the terms on which they would be provided, and the consequences of endorsing the check, but that the placement of the disclosures on the back of the check and on the disclosure statements in lengthy paragraphs of small print made them inconspicuous; and that the check was misleading.

The State of Kansas alleges that Defendants also violated K.S.A. 50-626(b)(11) by sending renewal notices to consumers to solicit payment of money, which notices the State of Kansas alleges reasonably could have been considered a bill, invoice or statement of account due, without providing disclosures allegedly required by law under the Postal Reorganization Act, 39 U.S.C. section 3001 (d), and the Domestic Mail Manual (DMM section CO31, parts 1.1 – 1.6. [

II.

DEFINITIONS

1. “YPI” means YELLOW PAGES, INC., a Nevada corporation, d/b/a www.YellowPagesInc.com, its employees, officers, directors, agents,

successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, and all other persons or entities acting in concert or participation with it.

2. "EDC" means Electronic Directories Company, LLC, a California limited liability company, its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, and all other persons or entities acting in concert or participation with it.

3. "PRIOR CUSTOMERS" means all Kansas businesses, organizations and other persons that cashed one or more of YPI or EDC's check solicitations prior to entry of this Journal Entry of Consent Judgment.

4. "PRIOR PAYING CUSTOMERS" is the subset of "PRIOR CUSTOMERS" that cashed one or more of YPI or EDC's check solicitations prior to the entry of this Journal Entry of Consent Judgment and made a payment of any amount to YPI or EDC or a collection agency for the services described in such YPI/EDC check solicitations.

III.

STIPULATIONS

The parties wish to make the following stipulations and agree to the entry of this Journal Entry of Consent Judgment.

The parties have previously entered into a Settlement Agreement regarding the issues set forth in this Journal Entry of Consent Judgment. It is stipulated that this Journal Entry of Consent Judgment subsumes the Settlement Agreement and constitutes a full and final resolution between the State, YPI,

EDC, JOHN WURTH and all existing or former owners, officers, directors and/or employees of YPI and EDC of all claims arising out of or related to YPI/EDC's check solicitation and/or check solicitation renewal forms including the claims specifically asserted in the Journal Entry of Consent Judgment.

YPI and EDC represent and warrant that their collection agency (commonly known as Continental Recovery Service ("CRS")) was not involved in the design or implementation of the check solicitation program, that they have instructed CRS to cease all collection activity arising out of the check solicitation program, and CRS has confirmed that it has in fact discontinued all such activities. Based upon those representations and warranties, it is further stipulated that this Journal Entry of Consent Judgment constitutes a full and final resolution between the State and CRS, and CRS's existing or former owners, officers, directors, employees, agents and servants, of all claims and collection efforts arising out of the form of YPI/EDC's check solicitation and/or check solicitation renewal forms; provided however, for the avoidance of doubt, the foregoing shall not release any claims against such collection agency that do not expressly arise from the form of YPI/EDC's check solicitation (e.g., claims of unfair debt collection practices not dependent on the form of the solicitation itself or claims that CRS did not comply with licensing, registration or bonding requirements). Additionally, CRS will not be released of any claim for any collection actions they pursue after the date of entry of this Consent Judgment. CRS is an intended beneficiary of this release. If any of the representations or warranties made by YPI and EDC regarding their collection company, CRS, are



found not to be true, the release of CRS shall be completely void. Failure to comply with the terms of this Journal Entry of Consent Judgment may result in a court order requesting civil penalties as provided in the K.S.A. 50-636(b).

It is further stipulated that Defendants deny all allegations contained in the state's pleadings and further deny that their conduct has in any way been unlawful. It is further stipulated that the parties have consented to the entry of this Journal Entry of Consent Judgment, without trial or adjudication of any issue of fact or law, solely in an effort to avoid the expense, burden, and uncertainty of litigation, and that this Journal Entry of Consent Judgment does not constitute an admission of liability by Defendants.

The Court then proceeded to read the pleadings and stipulations of the parties, and the Court determined that all parties agreed to the entry of this Journal Entry of Consent Judgment in the Shawnee County District Court of Shawnee County, Kansas and that it has approved this Journal Entry of Consent Judgment.

IV.

INJUNCTION

IT IS THEREFORE ORDERED that Defendants YPI, EDC and JOHN WURTH, and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, and all other persons or entities acting in concert or participation with them, are hereby permanently restrained and enjoined from:

- A. Directly or indirectly sending consumers in Kansas and consumers

anywhere in the United States from Kansas any solicitation that is in the form of a check which, when cashed or deposited by the consumer, purports to obligate the consumer to pay for any of Defendants' goods or services.

B. Engaging in any collection effort, either directly or by third party collection agency, against any PRIOR CUSTOMER for YPI or EDC's services that are the subject of the terms of the agreement arising out of such PRIOR CUSTOMER's deposit of a YPI or EDC check solicitation;

C. Utilizing or attempting to enforce any form of automatic renewal of contracts as to any PRIOR CUSTOMER based on the terms of YPI or EDC's check solicitation, or failing to provide that any renewal of contracts arising out of YPI or EDC's check solicitation is to be done by allowing the customer to "opt in" to the renewal, as opposed to "opting out."

D. Sending a renewal notice to, or otherwise attempting to renew the purported contracts of, any PRIOR CUSTOMER who is not also a PRIOR PAYING CUSTOMER.

E. Sending a renewal notice or renewal form in connection with any agreement arising out of the YPI/ED check solicitation (hereinafter, a "Check Solicitation Renewal Form") to a PRIOR PAYING CUSTOMER which does not comply with the Postal Reorganization Act, 39 U.S.C. section 3001 (d), and Domestic Mail Manual (DMM) section CO31, parts 1.1. – 1.6. and K.S.A 50-626(b)(11). For the purpose of sending renewal notices to PRIOR PAYING CUSTOMERS in connection with YPI/EDC check solicitations only, and for the purpose of this negotiated settlement only, a Check Solicitation Renewal Notice



substantially in the form of the renewal notice attached as Exhibit A, will be deemed to be in compliance with the Postal Reorganization Act, 39 U.S.C. section 3001 (d), the Domestic Mail Manual (DMM) section CO31, parts 1.1 – 1.6, [and California Civil Code 1716 or other applicable state invoice law].

F. The restrictions in paragraphs B through E relate to business arising out of the use of the check solicitation, and not other business.

RESTITUTION

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a mandatory injunction shall be issued against Defendants YPI and EDC and their employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, and all other persons acting in concert or participation with them, requiring the following:

A. If, as of the date of this Journal Entry of Consent Judgment, any **PRIOR CUSTOMER** has not paid for YPI or EDC's services such **PRIOR CUSTOMER** shall be deemed by YPI and EDC to have canceled any purported contract with YPI or EDC, and shall be canceled out of billing.

B. If YPI or EDC has received or learned about a complaint from any **PRIOR PAYING CUSTOMER** before the date of filing of this Journal Entry of Consent Judgment, whether from the customer directly or through any state or Federal agency or entity such as the Better Business Bureau or third party collection agency, to the extent YPI or EDC has not previously made a refund, YPI and EDC shall, within thirty days from the date of this Consent Judgment, pay a refund of any sums paid by said customer in connection with the

applicable YPI/EDC check solicitation and related agreement, less the amount of the check cashed by the consumer, and cancel the contract for such customer.

C. If YPI or EDC receive a complaint from any PRIOR PAYING CUSTOMER which is made within 60 days after the date of filing of this Journal Entry of Consent Judgment, whether from the customer directly or through any state or Federal agency or entity such as the Better Business Bureau, to the extent YPI or EDC has not previously made such refund, YPI and EDC shall, within 30 days of receipt of the complaint, pay a refund of any sums paid by said customer in connection with the applicable YPI/EDC check solicitation and related agreement, less the amount of the check cashed by the consumer, and cancel the contract for such customer.

D. If YPI or EDC has received or learned about a complaint from a customer in connection with a Check Solicitation Renewal Form before the date of filing of this Journal Entry of Consent Judgment, or if YPI or EDC receive a complaint from a customer in connection with a Check Solicitation Renewal Form which is made within 60 days after the date of filing of this Journal Entry of Consent Judgment, whether from a customer directly or through any state or Federal agency or entity such as the Better Business Bureau, to the extent YPI or EDC has not previously made such refund, YPI and EDC shall, within 30 days of the date of this Journal Entry of Consent Judgment, or within 30 days of receipt of the complaint, which ever is later, pay a refund of any sums paid by said customer in connection with the Check Solicitation Renewal Form and cancel the applicable contract for such customer.

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E. YPI and EDC shall prepare a report containing the name, address and phone number of all complaining consumers under paragraphs B through D above, the date the complaint was received, and the date and amount refunded for all complaining consumers in Kansas and deliver it to counsel for the State within 120 days after the date of filing of this Journal Entry of Consent Judgment.

F. YPI and EDC represent and warrant that they have not reported adverse credit information about any PRIOR CUSTOMER in connection with YPI/EDC's check solicitation to any credit reporting agency and that they have been informed by CRS that CRS also has not reported adverse credit information about any PRIOR CUSTOMER in connection with YPI/EDC's check solicitation to any credit reporting agency.

V.

**ACKNOWLEDGMENT OF RECEIPT OF CONSENT JUDGMENT
BY DEFENDANTS' AGENTS**

IT IS FURTHER ORDERED that, within five (5) business days after receipt by Defendants of this Journal Entry of Consent Judgment as entered by the Court, each officer, director, and each individual serving in a management capacity of Defendant YPI and EDC, shall submit to counsel for the State a truthful sworn statement, in the form shown on Exhibit B to this Journal Entry of Consent Judgment, that shall acknowledge receipt of this Journal Entry of Consent Judgment.

VI.

**DISTRIBUTION OF JOURNAL ENTRY OF CONSENT JUDGMENT
BY DEFENDANTS**



IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Journal Entry of Consent Judgment, Defendants shall:

A. Provide a copy of this Journal Entry of Consent Judgment to, and obtain a signed and dated acknowledgment of receipt, or proof of service, from each officer, director, and each individual serving in a management capacity, whether designated as employees, consultants, independent contractors, or otherwise, immediately upon employing or retaining any such persons, for any business where Defendants are the majority owner of the business or directly or indirectly manage or control the business, and where the business uses solicitation checks; and

B. Maintain and, upon reasonable notice, make available to counsel for the State, the original signed and dated acknowledgments of the receipt, or proof of service, of copies of this Journal Entry of Consent Judgment as required in Subsection (A) of this Paragraph.

VII.

RECORDKEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Journal Entry of Consent Judgment, in connection with any business where Defendants are the majority owner of the business or directly or indirectly manage or control the business, and where the business uses solicitation checks, Defendants are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date



of such creation, unless otherwise specified, the following records:

A. Books, records, and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records accurately reflecting: the name, address, and telephone number of each person employed by such business, including independent contractors; the job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items and services purchased, and description of the items and services purchased, for all consumers to whom such business sold, invoiced, or shipped any goods and services;

D. Records that reflect, for every consumer complaint or refund request known to have been received:

1. The consumer's name, street address, telephone number, and dollar amount paid by the consumer;

2. The complaint or refund request, if any, and the date of the complaint or refund request;

3. The basis of the complaint, if any, including the name of any employee or agent complained against, and the nature and result of any investigation conducted concerning the complaint;



4. Each response by Defendants and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event of a denial of a refund request, the reason for the denial.

E. Copies of all advertisements, solicitations or other marketing materials used by Defendants; *provided* that copies of all advertisements, solicitations or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

VIII.

STATE'S AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that counsel for the State is authorized to monitor Defendants' compliance with this Journal Entry of Consent Judgment by all lawful means, including, but not limited to, the following:

A. For a period of three (3) years from the date of entry of this Journal Entry of Consent Judgment, counsel for the State is authorized, without further leave of court, to obtain discovery from any person in the manner provided by the Kansas Rules of Civil Procedure, for the purpose of monitoring Defendants' compliance with any provision of this Journal Entry of Consent Judgment;

B. Counsel for the State is authorized to use representatives posing as consumers or suppliers to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice; and



C. Nothing in this Journal Entry of Consent Judgment shall limit the State's lawful use of compulsory process to determine whether Defendants have violated any provision of this Journal Entry of Consent Judgment or Kansas Consumer Protection Act.

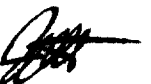
IX.

ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of Journal Entry of Consent Judgment, for the purpose of further determining compliance with Journal Entry of Consent Judgment, Defendants shall permit counsel for the State, within four (4) business days of receipt of written notice from counsel for the State:

A. Access during normal business hours to any office or facility storing documents of any business where Defendants are the majority owner of the business or directly or indirectly manage or control the business, and where the business uses solicitation checks. In providing such access, Defendants shall permit counsel for the State to inspect and copy all unprivileged documents relevant to any matter contained in this Journal Entry of Consent Judgment; and shall permit counsel for the State to remove such documents relevant to any matter contained in this Journal Entry of Consent Judgment for a period not to exceed two (2) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the owners, officers, directors, and employees, including all personnel involved in responding to consumer complaints or



inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection (A) of this Paragraph applies, concerning matters relating to compliance with the terms of this Journal Entry of Consent Judgment. The person interviewed may have counsel present, and counsel for Defendants may be present as well.

X.

PAYMENT TO THE STATE

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the State of Kansas shall have judgment against YPI and EDC, jointly and severally, in the amount of \$10,000.00 as a payment to the state for costs and attorneys fees in bringing this action and for consumer education and enforcement as directed by the Attorney General. This amount has been paid by YPI and EDC through a payment to the Office of the District Attorney of Orange County, California. The Office of the District Attorney of Orange County shall distribute to the State this amount, payable to the State of Kansas, within 30 days of entry of this Journal Entry of Consent Judgment.

XI.

GUARANTEE

By his signature below, JOHN WURTH guarantees the payment by YPI and EDC of the obligation to pay refunds to consumers as outlined in Section IV and the obligation to pay to the State of Kansas the amounts set forth in Section X of Journal Entry of Consent Judgment. In the event of default by YPI or EDC of



any payment obligation due under Sections IV and X, JOHN WURTH shall pay within 5 days of default by YPI or EDC, the amounts owed to consumers and to the State of Kansas. This guarantee shall remain in full force and effect until all amounts payable under Sections IV and X have been fully paid. If amounts remain unpaid for 10 days after JOHN WURTH has been sent a notice, by regular mail, of any amounts remaining payable under Sections IV and X, the court may enter judgment against JOHN WURTH, for the remaining amounts owed under the sections. Notice of the amounts remaining payable may be mailed to JOHN WURTH at 631 S. Manchester Ave., Anaheim, California 92802.

XII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Journal Entry of Consent Judgment, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XIII.

COMPLETE SETTLEMENT

The parties hereby consent to entry of the foregoing Journal Entry of Consent Judgment which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing

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Journal Entry of Consent Judgment shall constitute a full, complete and final settlement of this action.

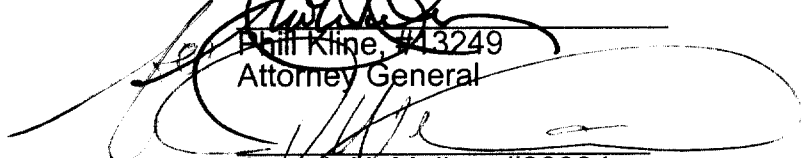
IT IS SO ORDERED this 25 day of April, 2006.


JUDGE PRESIDING

D.V. 9

For Plaintiff:


Phil Kline, #13249
Attorney General


Joseph N. Molina, #20934
Assistant Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

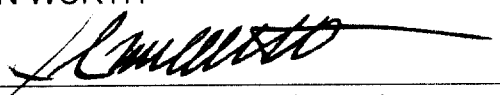
For Defendants:

YELLOW PAGES, INC.


By: 
JOHN WURTH

ELECTRONIC DIRECTORIES COMPANY,
LLC

By: 
JOHN WURTH


JOHN WURTH, Individually and as
Guarantor

FORM APPROVED:


Robert T. Stephan, #4488
ATTORNEY FOR DEFENDANTS