

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division \_\_\_\_\_

2009 OCT -7 PM 1:00

STATE OF KANSAS, <i>ex rel.</i>	)
STEVE SIX, Attorney General,	)
	)
Plaintiff,	)
	)
v.	)
	)
EQUITY FIRST FINANCIAL CORP.	)
and	)
KEITH BOURKNEY, an individual	)
	)
Defendants.	)

Case No. 09C1878

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this \_\_\_\_ day of \_\_\_\_\_, 2009, 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.* Steve Six, Attorney General, appears by and through Meghan E. Barnds, Assistant Attorney General.

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

**PARTIES, JURISDICTION AND VENUE**

1. Steve Six is the Attorney General of 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, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant Equity First Financial Corp. ("Defendant EFFC") is a foreign corporation organized and existing under the laws of Florida, and registered with the Florida Secretary of State.

4. Defendant EFFC's principal place of business is located at 1490 Sunshadow Drive, Suite 1030 in Casselberry, Florida 32708.

5. Defendant Keith Bourkney ("Defendant Bourkney") is the sole officer of Defendant EFFC.

6. Defendant EFFC has no current certificate of registration filed with the Kansas Secretary of State's Office to operate as a foreign corporation in the State of Kansas.<sup>1</sup>

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

8. Defendants stipulate and admit that 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.*

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

10. Defendants are suppliers within the definition of K.S.A. 50-624(j).

11. Defendants are engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

## DEFINITIONS

As used herein, the following terms shall mean:

12. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the

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<sup>1</sup> Equity First Financial Corp. is registered "active" with the Florida Secretary of State, but is no longer conducting business in the State of Kansas.

purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, leaflet, mailer, letter, catalogue, poster, billboard, point-of-purchase display, electronic mail, website, homepage, film, radio, television, or any other medium.

13. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

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

15. "Defendants" shall mean Equity First Financial Corp. and Keith Bourkney, along with their employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

16. "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

17. Defendants engage in the advertising, solicitation and sale of financial planning and debt management services.

18. Defendants contact Kansas consumers over the phone to solicit the sale of the aforementioned services.

19. The Plaintiff alleges that Defendants, while offering the aforementioned services for sale in Kansas, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

- a. Conducting business in Kansas without registering with the Kansas Secretary of State;
- b. Charging Kansas consumers' credit cards, for the purchase of Defendants' services, prior to receiving a signed confirmation from each consumer disclosing in full the terms of the transaction, in violation of K.S.A. §50-672(c);
- c. Making, or causing to be made, unsolicited consumer telephone calls to numbers listed on the national Do-Not-Call registry, in violation of K.S.A. §50-670a;
- d. Providing debt management services to Kansas consumers without registering with the Kansas State Bank Commissioner, in violation of K.S.A. §50-1118(a).

20. 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 and admit no liability, directly or indirectly, to the allegations or for any damages that may have resulted from their actions. Notwithstanding, Plaintiff and Defendants stipulate and agree that this Consent Judgment resolves the alleged violations set forth herein.

## INJUNCTIVE RELIEF

21. Defendants agree to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph nineteen (19) 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.

22. Defendants agree to refrain from, and to be permanently enjoined from, making oral representations that, directly or indirectly, contradict terms or language contained in Defendants' written contracts with Kansas consumers.

23. Defendants agree to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendant's advertising, promotional materials, sales presentations, or in any manner the nature of the services to be performed, specifically the ability of Defendants to: 1) achieve a particular level of savings for Kansas consumers and/or 2) achieve results for Kansas consumers within a particular time period.

24. Defendants agree to refrain from, and to be permanently enjoined from, misrepresenting, directly or indirectly, in Defendants' advertising, promotional materials, sales presentations, or in any manner the qualifications, training or experience of Defendants' personnel.

25. Defendants agree to refrain from, and to be permanently enjoined from, charging Kansas consumers' credit cards prior to receiving written, signed confirmations disclosing in full the terms of the transaction.

26. Defendants agree to refrain from, and to be permanently enjoined from, billing or charging Kansas consumers for products and services that Defendants neither provide nor perform.

27. Defendants agree to refrain from, and to be permanently enjoined from, making unsolicited telephone calls to Kansas consumers with telephone numbers listed on the Federal Trade Commission's Do-Not-Call Registry.

28. Defendants agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623, *et seq.* and the Kansas Credit Services Organization Act, K.S.A. §50-1116, *et seq.*

29. Defendants agree to register with the Kansas Secretary of State within twenty (20) days of execution of this Consent Judgment or cease conducting business in the state of Kansas.

30. Defendants agree to register with the Kansas State Bank Commissioner within twenty (20) days of execution of this Consent Judgment or cease all debt management service activities in the state of Kansas.

31. 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.

32. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of the Defendants within ten (10) days of execution of this Consent Judgment.

#### **CONSUMER RESTITUTION**

33. Defendants agree to provide a full refund to any Kansas consumer who requests a refund from Defendants within ninety (90) days after execution of this Consent Judgment.

34. Defendants agree to provide a refund to the following Kansas consumers in the amounts set forth below, to the extent such refund has not already been received:

*Kenneth Miller \$995.00*

35. Such restitution shall be delivered to the Office of the Kansas Attorney General at the time of signing the Consent Judgment. Payment shall be made by check(s) payable directly to the named consumers.

36. Such check(s) shall be delivered by the Office of the Kansas Attorney General to the appropriate consumers within ten (10) days of signing the Consent Judgment.

#### **INVESTIGATIVE FEES AND CIVIL PENALTIES**

37. Defendants agree to pay \$2,500.00 in expenses to the Office of the Kansas Attorney General, pursuant to K.S.A. §50-632 and §50-636.

38. Defendants agree to pay an additional \$10,000.00 in civil penalties to the Office of the Kansas Attorney General for violations of the Kansas No Call Act, pursuant to K.S.A. §50-670a(m).

39. Defendants agree to pay the aforementioned expenses and penalties, by check, in four (4) installments.

40. Defendants shall pay \$5,000.00 to the Office of the Kansas Attorney General at the time of signing this Consent Judgment. The remaining \$7,500 shall be paid in three (3) equal installments of \$2,500.00.

41. Defendants shall pay \$2,500.00 to the Office of the Kansas Attorney General within thirty (30) days of entry of this Consent Judgment, another \$2,500.00 within sixty (60) days of entry of this Consent Judgment, and the remaining \$2,500.00 within ninety (90) days of the entry of this Consent Judgment.

## OTHER PROVISIONS

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

43. 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.

44. 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.

45. 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.

46. 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.



47. 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 respective 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 for investigative fees in the amount of \$2,500.00 and civil penalties in the amount of \$10,000.

**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.**

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DISTRICT COURT JUDGE

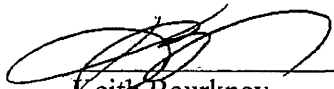
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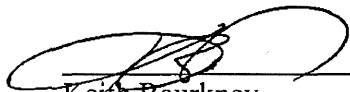
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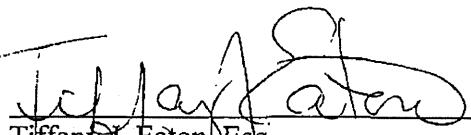
  
\_\_\_\_\_  
Meghan E. Barnds, #23685  
Assistant Attorney General  
Office of Kansas Attorney General, Steve Six  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751

*Attorney for Plaintiff*

DEFENDANTS:

  
\_\_\_\_\_  
Keith Bourkney  
President  
Equity First Financial Corp.

  
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Keith Bourkney

  
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Tiffany J. Eaton, Esq.  
Cove & Associates  
225 South 21st Avenue  
Hollywood, Florida 33020  
(954) 921-1121

*Attorney for Defendants*