

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

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division *6*

2010 AUG -2 P 4: 14

STATE OF KANSAS, <i>ex rel.</i>	)
STEVE SIX, Attorney General,	)
	)
Plaintiff,	)
	)
v.	)
	)
IDSELECTSECURITY, INC.	)
d/b/a ID SELECT SECURITY	)
and	)
JAMES IVES, an individual	)
	)
Defendants.	)

Case No. 10 C 580

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 2nd day of August, 2010, 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. Defendant IDSelectSecurity, Inc. d/b/a ID Select Security and Defendant James Ives, an individual, 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. 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 IDSelectSecurity, Inc. d/b/a ID Select Security ("Defendant IDSS") is a limited liability company, organized and existing under the laws of Pennsylvania.

4. Defendant James Ives ("Defendant Ives") is an individual and serves as the President, and sole officer, of Defendant IDSS.

5. Defendants have a principal place of business at 340 E Penn Drive, #227 in Enola, Pennsylvania 17025.

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

7. 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.*

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

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

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

## **DEFINITIONS**

11. "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.

12. “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.

13. “Defendants” shall mean Defendant IDSelectSecurity, Inc. d/b/a ID Select Security, Defendant James Ives, an individual, 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.

14. “Defendants’ Products and Services” shall mean any Internet website or page, Internet storage or hosting agreement, Internet web mail service, voicemail, and any other enhanced service offered by Defendants, the charge for which is billed or caused to be billed on a consumer’s telephone bill.

15. “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**

16. 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 website [www.idselectsecurity.com](http://www.idselectsecurity.com) (“Defendants’ website”).

17. 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' email 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' email 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 ILD Telecommunications Inc. ("ILD"), for services never authorized, requested or used by Kansas consumers, in violation of K.S.A. 50-627(a);
- d. Defendants engaged in the advertising, solicitation and sale of email service to Kansas consumers "AS IS," in violation of K.S.A. §50-639(a)(1) and K.S.A. 50-627(b)(7).

18. Defendants do not admit 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.

#### **INJUNCTIVE RELIEF**

19. Defendants agree to be permanently enjoined from engaging in those acts and practices set forth in paragraph seventeen (17) 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.

20. Defendants agree to be permanently enjoined from billing or collecting payment 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.

21. 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.

22. Defendants shall mail written notification to all 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. This notification shall be mailed to the address provided by the Kansas consumer at the time of purchasing Defendants' Products and Services.

23. 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 or receive Defendants' Product and Services.

24. Defendants' managers shall regularly review reports, generated by the record-keeping system, together with reports of cramming complaints made either to Defendants' billing aggregators or to 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.

25. If during any calendar month, more than five percent (5%) of all Kansas consumers being billed on behalf of Defendants complain of cramming (regardless of the entity to whom the complaint is made), 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 Defendants' proposed action plan to the Office of the Kansas Attorney General.

26. 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.*

27. 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.

28. Defendants agree to respond to all Kansas consumer complaints in good faith and in a reasonable, timely manner.

29. 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.

30. 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 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 CIVIL PENALTIES**

31. Defendants agree to pay \$10,000.00 in investigative fees to the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632.

32. Defendants agree to pay \$20,000.00 in civil penalties to the Office of the Kansas Attorney General, pursuant to K.S.A. 50-636.

33. Payment shall be made in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

Office of the Kansas Attorney General  
ATTN: Meghan E. Barnds, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

34. Defendants agree to be held jointly and severally liable for the amounts set forth in paragraphs thirty-one (31) and thirty-two (32).

35. Defendants agree that all unpaid fees 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 conduct underlying this settlement.

#### **OTHER PROVISIONS**

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

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. The injunctive terms of this Consent Judgment shall expire five (5) years from the entry of this Judgment, unless during this period Defendants cease to provide goods and services to Kansas consumers. During any period in which Defendants are not engaged in consumer transactions in Kansas, Defendants shall not be bound to comply with the terms of this injunction.

**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.

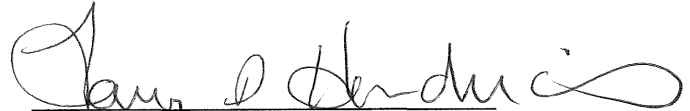
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendants are enjoined from the acts and practices set forth in paragraph seventeen (17) and that Defendants agree to implement the corrective and preemptive requirements as outlined in paragraphs nineteen (19) through thirty (30).

**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 \$10,000.00 and civil penalties in the amount of \$20,000.00.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants pay all costs associated with this action.


**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.**

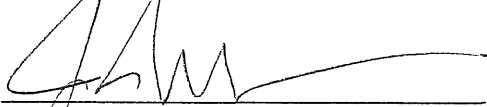
  
DISTRICT COURT JUDGE

Prepared and approved by:

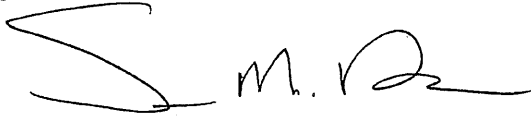
PLAINTIFF:

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

DEFENDANT:



James Ives, individually and on behalf of  
IDSelectSecurity, Inc.

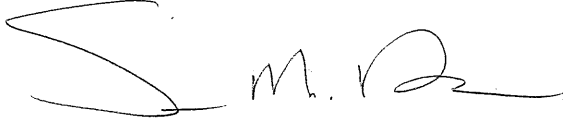


Stephen M. Bledsoe, #16769  
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2600 Grand Boulevard, Suite 1200  
Kansas City, Missouri 64108  
816-561-7007  
*Attorney for Defendants*

DEFENDANT:

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James Ives, individually and on behalf of  
IDSelectSecurity, Inc.

A handwritten signature in black ink, appearing to read "S. M. Bledsoe". The signature is written in a cursive style with a large initial "S" and a distinct "Bledsoe" ending.

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