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TOPEKA, KS.

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General

Plaintiff,

vs.

ASSOCIATED FINANCIAL SOLUTIONS, INC.
and JOHN F. USHER,

Defendants.

Case No. 01 C 660

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 14 day of March, 2001, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendants Associated Financial Solutions, Inc. and John F. Usher, appear by and through John F. Usher.

Whereupon, the parties advise the Court that they have stipulated and agree to the following matters:

1. Carla J. Stovall 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,

K.S.A. §50-623 *et seq.* and the Credit Services Organization Act, K.S.A. §50-1101 *et. seq.*, and the Credit Repair Organizations Act, 15 U.S.C. §1679 *et. seq.*

3. Defendants Associated Financial Solutions, Inc. and John F. Usher is a domestic not-for-profit corporation organized under the laws of the state of Kansas. The principal office of the corporation is located at 2114 Southwest 72nd Terrace, Topeka, Kansas 66619.

4. Pursuant to its Articles of Incorporation, Defendant Associated Financial Solutions, Inc. may be served with process by serving its registered agent, John F. Usher at its registered office, 2114 Southwest 72nd Terrace, Topeka, Kansas 66619. John F. Usher may, in his individual capacity be served at his residence, the same location.

5. Defendants are suppliers within the definition of K.S.A. §50-624(i) and operators of a credit services organization, as defined by K.S.A. §50-1101(a) and a credit repair organization, as defined by 15 U.S.C. §1679a(2). Defendants have engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

6. Defendants admit the Court has personal and subject matter jurisdiction over the parties.

7. Defendants stipulate and waive any objection to venue in Shawnee County.

8. The Attorney General alleges and Defendants admit Defendants engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act, the Credit Services Organization Act, K.S.A. §1101 *et. seq.*, and the Credit Repair Organizations Act, 15 U.S.C. §1679 *et. seq.* These violations include, but are not limited to the following:

- a. Defendants operate as a credit services organization, as defined in K.S.A. §50-1102, due to the fact that Defendants, with respect to the extension of credit by others and in return for the payment of money, provide or represent that they will provide the services of (1) improving a buyer's credit record, history and rating; (2) obtaining an extension of credit for buyers; and (3) provide advice and

assistance to buyers with regard to both. Defendants have charged consumers for services (including an initial fee of \$99.95, an account handling charge of \$50.00 for each account handled by Defendants, and 15% of the savings realized for the consumer) before completing performance agreed upon without filing a surety bond in the amount of \$25,000.00 with the Kansas Consumer Credit Commissioner, in violation of K.S.A. §50-1103 and K.S.A. §50-1104. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111. Such failure to complete performance the service which the credit repair organization has agreed to perform for consumers before accepting payment from consumers is in violation of 15 U.S.C. §1679b(b).

- b. Defendants advertised, or caused to be advertised, the services of a credit services organization without filing a registration statement with the consumer credit commissioner, in violation of K.S.A. §50-1103(f). This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.
- c. Defendants operate as a credit services organization; however, Defendants have failed to provide consumers/buyers with a disclosure statement containing all required information, in violation of K.S.A. §50-1106 and 15 U.S.C. §1679c, and have, therefore, failed to provide the same to consumers, in violation of 15 U.S.C. §1679e. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.
- d. Defendants failed to provide written contracts which met the requirements set out by 15 U.S.C. §1679d, which include an estimate of the date by which the

performance of the services will be complete or the length of time necessary to perform such services.

- e. Defendants provided consumers/buyers with a "Membership Agreement" as a contract for defendants' services (attached as Exhibit A). Defendants' contract did not include a notice of cancellation to said consumers/buyers which conforms with either K.S.A. §50-1107 or 15 U.S.C. §1679e. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.
- f. Consumers are required to sign a form entitled "Member Power of Attorney," a representative copy of which is attached hereto and marked as Exhibit B. Such Member Power of Attorney and/or the Membership Agreement include provisions that:
 - i. "I understand that AFSI neither warrants nor guarantees a specific outcome within a specific period of time . . .
 - ii. "I understand that Unless specifically stated herein, no promises whether express or implied by any representative of AFSI are valid . . .
 - iii. "I understand all fees paid to AFSI are donations and are non-refundable."This is an unconscionable attempt to exclude, modify, or otherwise limit the implied warranties of Defendants' services and/or any remedy provided by law for a breach of the same, in violation of K.S.A. §50-627(b)(7). Such waiver is void, further, in violation of K.S.A. §50-1107 and §50-1108. This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.

g. Defendants offer and sell to consumers/buyers the services of a credit services organization without a clear disclosure of the eligibility requirements for obtaining an extension of credit is deceptive and in violation of K.S.A. §50-1103(c). This is also in violation of K.S.A. §50-626(b), in that a violation of the Credit Services Organization Act is deceptive and a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. §50-1111.

9. Defendants voluntarily admit liability and agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

10. Defendants agree to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent Judgment, and Defendants agree that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

11. Defendants agree to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*, as it now exists or as amended in the future and Defendants agree that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

13. Defendants agree to make available and to disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

14. Defendants agree to resolve any future complaints filed with the Office of the Attorney General regarding Defendants after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendants for resolution.

15. Defendants agree to refund all consumers who request a refund in the amounts such consumers have paid to Defendants within ten (10) days of receiving notice of such request. Such refunds shall be made, payable to each consumer, and delivered to the Attorney General of the State of Kansas within ten (10) days of Defendants' receipt of the same.

16. 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.

17. Defendants agree to pay \$ 10,000, pursuant to K.S.A. §50-632, to the Office of the Attorney General of the State of Kansas. Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendants' signing of this Consent Judgment.

18. Defendants agree to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendants do not pay the amounts as agreed herein within the time frame stated.

19. Defendants agree to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendants' business records in the future.

20. 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.

21. 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.

22. Compliance with this Consent Judgment does not relieve 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 her jurisdiction.

23. 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 Defendants nor shall 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.

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 in favor Plaintiff in the amount of \$10,000.00.

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.

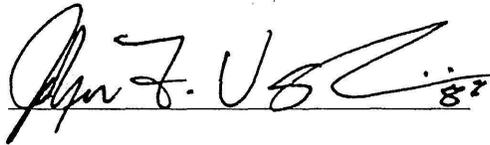
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DISTRICT COURT JUDGE

Approved by:


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