

01-022

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TOPEKA, KS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

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

Plaintiff,

vs.

CARTER WHALEN,
d/b/a PACIFIC CONSOLIDATION SERVICE,

Defendant.

Case No. 01 C770

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 9th day of July, 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. Defendant Carter Whalen, d/b/a Pacific Consolidation Service, appears by and through Michael B. Lowe, Payne & Jones, Chartered.

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. Defendant Carter Whalen, d/b/a Pacific Consolidation Service, is a sole proprietorship organized under the laws of the state of Washington. The principal office of the business is located at 12128 N Division #151, Spokane Washington 99218.

4. Defendant Carter Whalen, d/b/a Pacific Consolidation Service, may be served with process by serving Carter Whalen, 17207 North Sunnyvale Court, Nine Mile Falls, Washington 99026.

5. Defendant is a supplier within the definition of K.S.A. §50-624(i) and operator of a credit services organization, as defined by K.S.A. §50-1101(a). Defendant has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

6. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

7. Defendant stipulates and waives any objection to venue in Shawnee County.

8. The Attorney General alleges and Defendant admits Defendant engaged in the following acts and practices:

- a. Defendant operates as a credit services organization, as defined in K.S.A. §50-1102, due to the fact that Defendant, with respect to the extension of credit by others and in return for the payment of money, provides or represents that it 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. Defendant has charged consumers a one-time payment of \$289.00 for services 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. Defendant operates as a credit services organization; however, Defendant has 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.
- c. Defendant 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.
- d. Defendant provided consumers/buyers with contracts for defendants' services (attached as Exhibit A). Such contracts 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.
- e. Defendant offers and sells 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. Defendant agrees 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 Defendant agrees that engaging in such acts or similar acts in Kansas, after the date of this Consent Judgment, shall constitute a violation of this Order.

10. Defendant agrees 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 in Kansas after the date of this consent judgment shall constitute a violation of this Order.

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

12. Defendant agrees 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.

13. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant 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 Defendant for resolution.

14. Defendant agrees to refund all consumers with a Kansas address (who have not already received a refund) in the amounts such consumers have paid to Defendant at the time of Defendant's signing of this Consent Judgment. Such refunds shall be made, payable to each consumer, and delivered to the Attorney General of the State of Kansas at the time of Defendant's delivery of this Consent Judgment.

15. Defendant agrees 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 or this Consent Judgment.

16. Defendant agrees to pay \$ 2,500, pursuant to K.S.A. §50-632, to the Office of the Attorney General of the State of Kansas. Payment of \$1,000 shall be made by cashier's check and shall be delivered to the Attorney General of the State of Kansas on or before July 1, 2001. Thereafter, payments shall be made by cashiers checks in the amount of \$500.00 per month, commencing on August 1, 2001, and continuing on the first day of each month thereafter until the entire remaining balance totaling \$2,500.00 is satisfied.

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

18. Defendant agrees to maintain all business records pertaining to Kansas residents for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

19. 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.

20. 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.

21. Compliance with this Consent Judgment does not relieve Defendant 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.

22. 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 Defendant nor shall Defendant 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 Defendant 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 \$2,500.00.

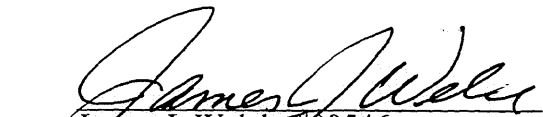
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

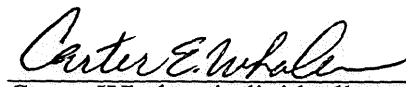
/s/ Hon. Franklin E. Theis
DISTRICT COURT JUDGE

Approved by:

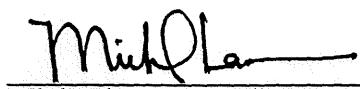
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