

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2003 APR 30 A 8:41

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, ex rel.,)
PHILL KLINE, Attorney General)
)
Plaintiff,)
)
vs.)
)
PACESETTER CORPORATION,)
a Nebraska corporation,)
)
Defendant.)

Case No. 03C-616

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 28th day of April, 2003, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. § 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Joseph N. Molina, Assistant Attorney General. Defendant appears through counsel Carl A. Gallagher.

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

1. Phill Kline 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 § 50-623 *et seq.*, and K.S.A. 50-670 & 50-670a (2002 Supp.).
3. Defendant Pacesetter Corporation is a corporation licensed under the laws of the State of Nebraska. The principal office of the corporation is located at 4343 South 96th Street, Omaha, NE 68127.
4. Defendant is a telephone solicitor, as defined by K.S.A. 50-670a(a)(3)(2002 Supp.)

and has engaged in unsolicited consumer telephone calls within the definition of the K.S.A. 50-670(a)(2) (2002 Supp.).

5. The Court has personal and subject matter jurisdiction over the parties for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

6. Defendant stipulates and waives any objection to venue in Shawnee County for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

7. The Plaintiff alleges Defendant engaged in the following unconscionable acts and practices in violation of the Kansas Consumer Protection Act, specifically K.S.A. 50-670 & 50-670a (2002 Supp.):

- a. That on or after January 1, 2003, through March 3, 2003, Defendant made or caused to be made unsolicited consumer telephone calls for the purpose of soliciting a sale of property or services, an extension of credit for the sale of property or services or for obtaining information that will or may be used for the direct solicitation of a sale of property or services.
- b. These calls included unsolicited consumer telephone calls to consumer telephone numbers that were registered on the Kansas No-Call List published October 1, 2002 and February 1, 2003.

8. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

9. Defendant agrees to abide by the law, specifically, K.S.A. 50-670 & 50-670a (2002 Supp.), and that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order. Defendant does not, however, waive any defenses existing under this law through its agreement to this Consent Judgment.

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

11. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within ten (10) days of signing the Consent Judgment.

12. Defendant agrees to be 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.

13. Defendant agrees to pay \$ 5,000.00 in civil penalties and investigative fees to the "Office of the Attorney General" of the State of Kansas. Payment shall be made by cashier's check and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment.

14. 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.

15. 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.

16. 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 his jurisdiction.

17. 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.

18. The terms and provisions of this Consent Judgment shall expire one (1) year from the date of this Journal Entry unless extended by further order of the court or by agreement of the parties.

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 Defendant in favor of Plaintiff in the amount of \$5,000.00 and plaintiff hereby acknowledges satisfaction of such judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant 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.

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JUDGE OF THE DISTRICT COURT

Prepared and approved by:

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By: 

Phill Kline #13249
Plaintiff

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