

E-03-000032

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
2003 MAY 29 P 1:28

James R. McCabria, #16563
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division _____

STATE OF KANSAS, ex rel.)
PHILL KLINE, Attorney General)
Plaintiff)
)
vs.)
)
LEASECOMM CORPORATION, and)
MICROFINANCIAL INCORPORATED,)
)
Defendants)
_____)

Case No. 03 _____

Consent Judgment

Plaintiff, the State of Kansas ex. rel. Phill Kline, Attorney General ("State"), by and through Assistant Attorney General James R. McCabria, and Defendants, Leasecomm Corporation and MicroFinancial Incorporated, by and through Mark A. Biberstein,, consent to the entry of this Consent Judgment and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability. The parties wish to end their dispute, and avoid the expense, delay, and uncertainties of further investigation and/or litigation, by consenting to the entry of this Consent Judgment.

This is a Consent Judgment as provided for by K.S.A. 50-632(b) ("Final Judgment") for which execution may issue. Defendants hereby accept and expressly waive any defect in connection with service of process issued on the Defendants by the State. Defendants consent to entry of this Final Judgment without further notice.

WHEREAS, the Defendants deny the allegations alleged in the Complaint filed herewith and do not admit liability for the acts and practices alleged therein. However, the Defendants wish to resolve the instant action and have consented to the entry of this Final Judgment. The agreement by the Defendants to take the actions and pay the amounts described in this Final Judgment is not intended, and shall not be construed, as an admission of wrongdoing in connection with the subject matter of the Kansas Petition, and the agreement of the Defendants is made solely for purposes of compromise and settlement of this action and does not constitute evidence or an admission of any liability or wrongful conduct. Furthermore, pursuant to K.S.A. 50-638(b), venue as to all matters between the parties relating hereto or arising out of this Final Judgment lies in the District Court, Shawnee County, Kansas.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

I. DEFINITIONS

1. As used in this Final Judgment, the following words or terms shall have the following meanings:

- 1.1. "Business opportunity" or "business venture" shall include any written or oral business arrangement, however denominated, that:
 - (a.) is covered by the Federal Trade Commission's Franchise and Business Opportunity Rule; or
 - (b.) is a purported profit making venture (e.g., multilevel marketing programs, pyramid schemes, buyers' clubs, coupon clipping programs, investment opportunities, etc.), regardless of how participation in the venture is characterized (e.g., as investors, members, donors, etc.), seminar, or promotion that seeks to induce customers to make money through business or investment, or a similar intangible item.
- 1.2. "Clearly and conspicuously" shall mean in a printed document, the disclosures shall be in a type size and location sufficiently noticeable for an ordinary customer to read and comprehend, in print that contrasts with the background against which it appears.

- 1.3. "Complaint" shall refer to any substantive written, verbal, electronic or telephone communication from any customer protesting, objecting to, or complaining about any business act or practice of the Defendants or of any Dealer or Vendor.
- 1.4. "Customer" is any natural person who is individually liable to pay one or more Defendants for financing, either directly or indirectly, *e.g.*, as a cosignor, guarantor, proprietor, or a signatory general partner.
- 1.5. "Dealer" or "Vendor" shall refer to any natural person, business, DBA, partnership, corporation, incorporated or unincorporated association, and any other legal or commercial entity however organized who, directly or indirectly, arranges for a Customer to apply for Defendants' financing or provides Defendants' financing documents to Customers.
- 1.6. "Defendants" shall mean Leasecomm Corporation and MicroFinancial Incorporated, and their divisions, subsidiaries, successors, and assigns.
- 1.7. "Equipment" shall refer to any tangible equipment including, but not limited to, point of sale hardware, ATM machines, coffee machines, commercial security equipment, restaurant equipment, water systems and coolers, advertising and display equipment, vending machines, and paging systems financed by the Defendants to Customers.
- 1.8. "Financing" or "Financing contract" shall refer to any Financing arrangement, whether styled as a contract, lease, or otherwise. For purposes of this Final Judgment, the term "Financing" includes any debt collection activities related to the Financing.
- 1.9. "Intangible Products" shall refer to any intangibles such as Virtual Terminals (also known as software licenses), software, services, and any other items that would be considered "general intangibles" under the Uniform Commercial Code.
- 1.10. "Loss and Damage Waiver Fees" shall refer to additional fees charged by the Defendants to provide for the replacement of lost or destroyed leased products.
- 1.11. "Massachusetts Final Judgment" shall refer to the Final Judgment By Consent entered in Superior Court of Suffolk County, Massachusetts between the Commonwealth of Massachusetts and the Defendants.
- 1.12. "Point of Sale (POS) Authorization Systems" shall refer to authorization systems for card-based payments made by, for example, debit, credit, and charge cards. The POS authorization systems include, but are not necessarily limited to, credit card processing equipment and Virtual Terminals.

- 1.13 “Point of Sale (POS) Hardware” shall refer to POS authorization systems consisting of tangible equipment such as credit card processors, swipe terminals, and key pad terminals.
- 1.14 “Predominant purpose” means the purpose of the financing as represented to the Customer by the Dealer or Vendor or as evidenced by distribution of proceeds.
- 1.15 “SBI Product Lines” means Virtual Terminals and various other software, software licenses, and combinations of products that are financed, and referred to internally by Leasecomm, as: INTERNET CONSULTING PKG, COMBOV 3, CR COMBO, CR COMBOE, CR COMBOS, CR COMBOW, CR CRD 3 30, CR CRD 30, CR VTERM, CR VTERM 30, CR VTERM3 30, INTERNET TBX, SBI COMBOV, SBI CRD TERM, SBI VTERM, SOFTWARE, WEB SITE.
- 1.16. “SBI Judgments” means Leasecomm’s uncollected judgments for the SBI Product Lines.
- 1.17. “SBI Suits” means all pre-judgment, civil collection actions currently pending in court in which Leasecomm or an assignee of Leasecomm is the plaintiff and the product purportedly leased is in an SBI product line.
- 1.18. “Solicitation” shall refer to any solicitation method offering to sell or finance equipment, intangible products, or business opportunities, including but not limited to, Internet promotions, direct mail, print advertisements, infomercials, seminars, door-to-door sales, and telemarketing.
- 1.19. “States and Jurisdictions” shall refer to representatives from the Offices of the State Attorneys General from Florida, Illinois, Kansas, Massachusetts, North Carolina, North Dakota, and Texas, and the Office of the District Attorney of Ventura County, California.
- 1.20 “Virtual Terminal” shall refer to a POS authorization system which includes any intangible products, rights to access or use services, software, and licenses which enable Customers to process credit card transactions or account debits on-line or through the Internet over a computer.

II. PERMANENT INJUNCTIVE RELIEF

2. Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that immediately upon the entry of this Final Judgment, pursuant to K.S.A. 50-632(a)(2), the Defendants, and those persons in active concert or participation with them who receive actual notice of this Final

Judgment by personal service or otherwise, shall be permanently enjoined and restrained, or as otherwise set forth in this Final Judgment, from directly or indirectly engaging in any of the following or permanently required to directly or indirectly engage in any of the following:

General Prohibition of Misrepresentations

3. The Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, in connection with any Financing offered or provided to Customers, are permanently enjoined and restrained from making any material misrepresentations, directly or indirectly, including:

(a) Misrepresenting the nature, terms, or predominant purpose of the Financing.

(b) Misrepresenting that Customers have waived any defenses, or are precluded from raising any defenses or counterclaims.

Prohibited Leasing of Virtual Terminals and Business Opportunities

4. For a period of four (4) years following the entry of this Final Judgment, the Defendants are enjoined and restrained from entering into any Financing contract for Virtual Terminals with Customers. Thereafter, the Defendants will not enter into any Financing contract for Virtual Terminals with Customers unless the contract is on a month-to-month term and is cancellable without penalty upon written notice. Alternatively, if four (4) years have passed following the entry of this Final Judgment, and the Uniform Computer Information Transaction Act (UCITA), or a substantially equivalent statute governing the Financing of Intangible Products has been adopted by any state of the United States, then this paragraph shall not prohibit the Financing of Virtual Terminals by the Defendants in those states where the statute has been adopted, but only to the extent the Financing complies with that state's statute and, additionally, any contract disputes shall require the application of that state's UCITA statute or the equivalent statute to issues involving the

Financing of Intangible Products.

5. The Defendants are permanently enjoined and restrained from Financing any Equipment or product to Customers in conjunction with any Business Opportunity solicitation or where the predominant purpose of the Financing is for a Business Opportunity or Business Venture.

6. The Defendants shall put each and every Dealer and Vendor on notice that no Financing application or contract will be accepted if it has been solicited or obtained in a manner prohibited by paragraphs 4 and 5 above.

7. The Defendants shall also contact each Customer prior to the acceptance of the Financing application or contract and ask questions sufficient to confirm that the transaction complies with paragraphs 4 and 5 above.

8. If the Defendants determine by any means that a Financing transaction entered into after the entry of this Final Judgment fails to comply with paragraphs 4 and 5 above, then the Defendants shall immediately reject the Financing application or contract. If the Defendants determine that the Financing transaction entered into after the entry of this Final Judgment fails to comply with paragraphs 4 and 5 above after the Defendants have received any payment or funded the transaction, the Defendants shall terminate any such Financing contract which was previously accepted by the Defendants after entry of this Final Judgment and provide refunds of any money received by the Defendants from any such Customers, only under the following circumstances: (1) the Defendants did not ask questions prior to the acceptance of the Financing contract sufficient to determine whether the transaction complied with paragraphs 4 and 5 above, or (2) the Defendants had sufficient information prior to the funding of the transaction to have known that the transaction did not comply with paragraphs 4 and 5 above. The Defendants shall also notify the Dealer or Vendor of the violation and shall take appropriate action against said Dealer or Vendor, which may

include the termination of its business relationship with the Dealer or Vendor.

Required Disclosures and Prohibited Contract Provisions

9. The Defendants, in connection with Financing provided to Customers, are permanently restrained and enjoined from:

(a) Including in any Financing contract any provision that allows the Defendants to bring a collection suit in a forum other than the county where the Customer resides at the commencement of the action, or in the county where the Customer signed the contract sued upon.

(b) Including in any Financing contract any provision that (1) states that the Defendants have the right to enforce the Financing contract free from any defenses, offsets, or counterclaims, (2) states that the Customer waives any defense or counterclaim, or (3) states that the Customer has no defenses, offsets, or counterclaims, except to the extent that the provision is authorized by law.

(c) Conditioning the extension of credit to a Customer on the Customer's repayment by means of preauthorized electronic fund transfers from an account established primarily for personal, family, or household purposes, as prohibited by the EFTA, 15 U.S.C. § 1693k, and Reg. E, 12 C.F.R. § 205.10 (e).

10. Furthermore, the Defendants in connection with any and all Financing offered or provided to customers, are ORDERED TO:

(a) Clearly and conspicuously disclose in the Financing contract prior to its execution by a Customer that the Financing contract is with the Defendants and not with a Dealer, Vendor, or agent.

(b) Identify in the Financing contract prior to its execution by a Customer the Equipment or products subject to the contract by model (if existing) and manufacturer, and include a

description sufficient to identify the Equipment or product(s) being Financed. Within thirty (30) days after the Defendants' execution of the Financing contract, the Defendants shall inform the Customer in writing of the Equipment's serial number to the extent one exists and has been provided to the Defendants.

(c) Identify in the Financing contract prior to its execution by a Customer the Dealer or Vendor by name, address, telephone number, and the corresponding Dealer code used by the Defendants, and identify the Dealer's or Vendor's sales representative by name in legible form.

(d) Clearly and conspicuously disclose in the Financing contract prior to its execution by a Customer the cost of each monthly or base payment, the number of payments required under the contract, and the maximum purchase price (or "buyout cost") of the Financed equipment to be charged at the end of the contract term, expressed as a percentage of the aggregate lease payments.

(e) Clearly and conspicuously disclose in the Financing contract prior to its execution by a Customer the type of taxes that will be collected and the maximum amount of the Loss and Damage Waiver Fees which will be assessed if the Customer does not provide proof of insurance for the financed Equipment to the Defendants. Within thirty (30) days after the Defendants' receipt of the Financing contract, the Defendants shall inform the Customer in writing of the then applicable amount to be paid in taxes and, if applicable, the then applicable amount of the Loss and Damage Waiver Fees to be charged.

(f) Clearly and conspicuously state in the Financing contract prior to its execution by a Customer whether the financed Equipment and/or its components are 'new', 'used', or 'reconditioned - contains used parts' by including three boxes, so labeled, one of which is to be checked off.

(g) Clearly and conspicuously state in the Financing contract prior to its execution by a Customer the amounts of any collection fees to be imposed or the basis for calculating any such fees, and the conditions of their imposition, except that the Financing contract may state that the Customer will be liable for reasonable attorney fees or costs in the event the Defendants obtain a judicial ruling or decision in their favor regarding the Customer's liability under the Financing contract.

(h) Limit any clause in the Financing contract which provides for the automatic renewal of the contract to a period of time not exceeding a month-to-month renewal after the expiration of the initial contract term. Thirty (30) days to sixty (60) days prior to the initial expiration date of the contract, whether now in existence or to be entered into in the future, the Defendants shall send a notice to the Customer. The notice shall state the date the initial contract term is to expire, explain the Customer's options, and state that if the Customer does not provide notice of intent to cancel the contract at the end of the contract term within thirty (30) days before the end of the contract term and return the Equipment by the date specified in the notice, or purchase the Equipment, the Financing contract will continue as a month-to-month contract, cancellable without penalty imposed due to exercise of cancellation rights upon thirty days prior written notice. (While there may be no penalty imposed due to the exercise of cancellation rights, nothing herein shall affect the Customer's obligation to pay any charges or amounts due under the contract.) Upon written or verbal request of the Customer for the Equipment's purchase price, the Defendants will provide to the Customer in writing the purchase price within a reasonable period of time.

(i) Clearly and conspicuously number each page of every Financing contract prior to its execution by a Customer to reflect the page number and the total number of pages (e.g., page 1 of 2).

(j) Prior to the Financing contract's execution by a Customer, provide all notices of rights of rescission or cancellation as required for the type of transaction set forth in the Financing contract in accordance with governing laws, and clearly and conspicuously state that the Customer must notify the Defendants directly if the Customer wishes to exercise a right of rescission or cancellation.

(k) Mail a copy of the fully executed Financing contract to every Customer at the address stated in the Financing contract within fifteen (15) days of the Defendants' execution of the Financing contract, but no later than thirty (30) days following the Defendants' receipt of the contract from the Dealer or Vendor (except that if the Equipment is custom made, custom assembled or custom ordered for the Customer, such as commercial signage, restaurant equipment, or non-POS Hardware general business equipment, Defendants shall have up to ninety (90) days after receipt of the Financing contract, or ten (10) days after Defendants' completion of the verification process set forth in paragraph 15 below, whichever first occurs, within which to mail a copy of the fully executed Financing contract to the Customer). In addition, the Defendants shall instruct every Dealer and Vendor to provide a copy of the proposed Financing contract as it then exists, including the information to be provided to the Customer prior to the Customer's execution of the Financing contract pursuant to paragraphs 10 (a) through 10 (g) above, to the Customer at the time the Customer executes the contract along with any applicable notices of rights of rescission or cancellation.

Prohibited Distant Forum Practices

11. Defendants are permanently restrained and enjoined from instituting collection suits against Customers in a forum other than the county where the Customer resides at the commencement of the action, or in the county where the Customer signed the contract sued upon;

except that this provision shall not apply in any way to suits filed against the Defendants. This provision shall not preempt any rule of law that further limits choice of forum or that requires, in actions involving real property or fixtures attached to real property, that suit be instituted in a particular county.

12. Where the Defendants learn subsequent to institution of a suit filed after the entry of this Final Judgment that paragraph 11 above has not been complied with, they shall immediately seek to dismiss the suit, with or without prejudice, and move to vacate any judgment entered thereunder. In lieu of dismissal, the Defendants may effect a change of forum to a county permitted by the preceding paragraph, provided that the Defendants give the Customer notice of this action and opportunity to defend equivalent to that which the Customer would receive if a new suit were being instituted. If the Defendants effect a dismissal, they may file a new suit in a forum permitted by paragraph 11 above. In any case where the Defendants transfer a suit, they shall provide the Customer with a clear, written explanation of the action taken and, if the suit is transferred or refiled, of the Customer's right to appear, answer, and defend in the new forum.

13. Where the Defendants effect dismissal of a suit or vacation of a judgment pursuant to paragraph 12 above, they shall give effective notice of the dismissal or vacation to the affected Customer and to each consumer reporting agency, as that term is defined in the Fair Credit Reporting Act, 15 U.S.C. § 603, or business credit reporting agency, that the Defendants have informed of the suit or have reason to know regularly records the Defendants' suits or judgments in its files. Effective notice is notice given in the manner ordinarily provided by the Defendants reasonably sufficient to remove or correct any negative effect on the Customer's credit rating that may exist due to the original reporting of the judgment or suit. Additionally, the Defendants shall furnish the notice to any other person or organization upon request of the Customer.

Loss and Damage Waiver Fees - Prohibited Practices

14. The Defendants are permanently enjoined and restrained from imposing Loss and Damage Waiver Fees for financed products, unless (1) the products are products which are not Intangible Products; (2) the Loss and Damage Waiver Fee is reasonably related to the cost of replacing the lost or damaged equipment or product; (3) the Loss and Damage Waiver Fee is clearly and conspicuously disclosed in advance of imposition; and (4) the Defendants have in place a procedure for determining from the Customer whether the Customer has insurance before it imposes the Loss and Damage Waiver Fee.

Verification Procedures - Required Practices

15. For each Financing transaction, the Defendants shall request, prior to acceptance of a Financing contract, either in writing or in a telephone conversation that is tape recorded (with notice and consent of the customer), the following information: (1) how the Customer first came into contact with the Dealer or Vendor; (2) where the Financing contract was signed by the Customer including the address and a description of the address (e.g., business, home, or hotel); (3) a description of what the Customer believes is being financed; and (4) the Customer's acknowledgment, after the Customer has received and inspected the Equipment or product, that the equipment or product was received in a satisfactory condition. The written recordings or taped telephone conversations obtained pursuant to this paragraph shall be maintained by the Defendants for a period of four (4) years. Furthermore, nothing in this paragraph shall be interpreted to limit or waive a Customer's or the Defendants' rights and protections under the Uniform Commercial Code.

Monitoring Vendors and Investigating Customer Complaints

16. The Defendants are hereby permanently restrained and enjoined from:

- (a) Failing to take reasonable steps sufficient to monitor all Dealers' and

Vendors' compliance with paragraphs 3, 4, 5, 6, and 10 of this Final Judgment. These steps shall include, at a minimum, establishing a procedure for receiving, investigating, and responding to Customer complaints, and ascertaining the number and nature of Customer complaints regarding transactions in which each Dealer or Vendor is involved.

(b) Failing to take corrective action with respect to any Dealer or Vendor whom the Defendants determine is not complying with this Final Judgment, which may include terminating the Defendants' business relationship with the Dealer or Vendor.

17. At the end of each six (6) month period during the two (2) years following the entry of this Final Judgment, the Defendants shall report to the Commonwealth of Massachusetts on behalf of the States and Jurisdictions: (1) all Dealers or Vendors terminated or sued by the Defendants and a summary characterization of the basis therefor; and (2) for each Dealer or Vendor with a default rate in excess of fifteen percent (15%), the Defendants shall report their respective fraud and misrepresentation claim rates, disciplinary action taken against each Dealer or Vendor, and the numbers of Customers having those Dealers and Vendors who have received relief from the Defendants, by category of relief received, such as cancellation of Financing contracts and Customer credit report notices.

18. With respect to Complaints received by the Defendants from Customers, whether received directly from the Customer or referred to the Defendants by a Dealer or Vendor, a government agency, or a consumer assistance program, the Defendants shall in good faith investigate said Complaints and provide appropriate remedies to Customers, including the cancellation of Financing contracts and refund of lease payments where appropriate.

Collection Practices and Collection Fees

19. With respect to any Complaint of fraud, misrepresentation, or relating to the delivery

of Equipment or Intangible Products received by the Defendants from Customers, whether received directly from the Customer or referred to the Defendants by a Dealer or Vendor, a government agency, or a consumer assistance program, the Defendants shall request that any credit reporting agency with which the Defendants regularly file reports, report the account as “disputed” within thirty (30) days of receipt of the Complaint.

20. If such Customer Complaint of fraud, misrepresentation, or relating to the delivery of Equipment or Intangible Products has been found to be valid by the Defendants, the Defendants shall request the credit reporting agency to report the account as “closed, inactive, deleted”.

21. The Defendants shall not award bonus pay or additional compensation to any employee based on the number of calls made and collection letters sent per Financing account.

22. Furthermore, the Defendants shall not:

(a) impose collection fees, including but not limited to, any fee for collection calls and letters, which in the aggregate produce revenues which exceed the Defendants’ reasonable estimate of the costs of collection;

(b) impose late fees for more than four (4) months of late payments or impose compound late fees or assess late fees as a percentage of the total outstanding late payments including outstanding late fees (for example, assuming hypothetically that a late fee is \$5.00, the total of such late fees that may be imposed would be \$20.00, that is, \$5.00 per month for four (4) months);

(c) fail to disclose in billing invoices the basis for charges and fees imposed including, but not limited to, charges not clearly identified in the Financing contract; or

(d) harass or threaten Customers for payment on Financing contracts.

III. CUSTOMER REMEDIES

23. In connection with collections on Financing to Customers, the Defendants shall cease collecting on any outstanding court judgments where the Financing involved Virtual Terminals or the predominant purpose of the Financing was for Business Opportunities or Business Ventures. The Defendants shall be deemed in compliance with the preceding sentence if they promptly cease collections on any outstanding SBI judgments and thereafter, for a period of one (1) year after entry of this Final Judgment, cease collections on any other outstanding judgment where the Customer demonstrates that the predominant purpose of the Financing was for a Business Opportunity or Business Venture. This cessation of collections shall include, but is not limited to, directing all third parties engaged in debt collection (e.g., debt collectors and debt collection attorneys) to cease immediately all collection activities; furnishing credit information to the three credit reporting agencies to whom the Defendants report to show the applicable account no longer has an outstanding balance; returning all monies received from Customers after the effective date of this Final Judgment; filing in the court where the initial judgment was entered a Satisfaction of Judgment; and sending a copy of the Satisfaction of Judgment to each affected Customer or its attorney of record along with the form shown in Attachment A to this Final Judgment. The Defendants shall provide the Commonwealth of Massachusetts on behalf of the States and Jurisdictions with a computer readable list of the affected Customers, including names, addresses, account numbers, product(s) financed, amount outstanding at the time of entry of this Final Judgment, and whenever available in the Defendants' records, the location of the court in which the judgment was entered and the date of the judgment.

24. The Defendants shall not take any action to enforce any Financing contract provision

that would have violated paragraph 9 (b) if it had been used after entry of this Final Judgment.

25. Within thirty (30) days after entry of this Final Judgment, the Defendants shall move the appropriate court to:

(a.) Dismiss, with or without prejudice, any SBI suit pending in a forum that would have violated paragraph 11 if the suit were filed after entry of this Final Judgment. In lieu of dismissal, the Defendants may effect a change of forum to a forum permitted by this Final Judgment, provided that the Defendants give the Customer notice of this action and opportunity to defend equivalent to that which the Customer would receive if a new suit were being instituted.

(b.) Stay or continue any pre-judgment non-SBI product line collection suits against Customers pending in a forum that would have violated paragraph 11 if the suit were filed after entry of this Final Judgment. The Defendants shall promptly notify the Customer in writing that the Customer has the opportunity to have the litigation transferred to, or dismissed without prejudice and refiled in, a forum permitted by this Final Judgment. The Defendants shall maintain the stay or continuance in effect for fifty (50) days so that the Customer has at least forty-five (45) days to reply, as set forth in the relevant portions of Attachment B to this Final Judgment. If the Customer elects to have the suit changed to a local forum, the Defendants shall follow the procedure described in paragraph 25 (a) above.

(c.) In all cases under paragraphs 25 (a) and (b), the Defendants shall provide the Customer with a clear, written explanation of the action taken and of the Customer's right to the change of forum and to appear, answer, and defend in the new forum. If the Defendants are entitled to claim any collection costs or attorney fees, they may not charge the Customer for any costs or fees associated with the initial filing or the change of forum. If local rules require a defendant's (Customer's) agreement to dismissal or transfer of the suit, then the Defendants shall not be

obligated to dismiss or transfer the suit if, after providing the Customer or their counsel with a clear, written explanation of the Customer's right to have the suit dismissed or transferred to the new forum, the Customer does not execute and return the documents required for transfer or dismissal without prejudice. The notice shall be in the form shown in Attachment B to this Final Judgment, with appropriate paragraphs included. A violation of paragraphs 25 (a), (b), or (c) shall render any judgment entered in the prohibited forum as a result thereof null and void and unenforceable by the Defendants or their assigns.

26. For consistency with other State Final Judgments being filed contemporaneously with this Final Judgment, this Paragraph is intentionally non-substantive.

27. Defendants shall provide any and all Kansas Termination Customers with the following relief. As used herein, the term "Kansas Termination Customers" shall mean: Leasecomm Customers listed on Exhibit 1 to the letter dated March 19, 2003, from Leasecomm's counsel to the Office of the Attorney General for the State of Kansas. Within 30 days from the date of this Final Judgment, Leasecomm shall mail a written notice in substantially the form of the Notice annexed hereto as Attachment C ("Notice") to all Kansas Termination Customers. If a Kansas Termination Customer responds to the Notice within the time period set forth therein, returns to Leasecomm the Equipment that is the subject of the Financing contract (or, in the case of a software license, all instruction booklets, manuals, and other documents associated with the software license, if any, in the Customer's possession or control), and signs and delivers to Leasecomm the Lease Termination and Release Agreement which is annexed hereto as Attachment D, then Defendants shall promptly terminate any such Kansas Termination Customer's Financing contract, not seek to collect any unpaid balance, request the credit reporting agencies to whom Leasecomm provides credit information that such lease be reported as "closed, inactive, deleted", seek to have any

pending collection action dismissed, and, if Leasecomm has obtained a judgment against the responding Kansas Termination Customer, file a Satisfaction of Judgment in the court where the initial judgment was entered. Nothing herein shall limit Leasecomm's ability and rights to assert claims and take other appropriate action in any proceeding initiated by any of the Kansas Termination Customers. The requirements of this paragraph are in addition to any other benefits provided in this Final Judgment as to the Kansas Termination Customers.

28. The Defendants shall cease debt collection activity, including written or oral contact with a Customer, seeking payment of past due amounts, other than normal invoicing for payments due, when a Financing contract payment on the account has not been received in the past 360 days relating to any Financing contract where the property financed is a Virtual Terminal (including software license) or where the predominant purpose of the Financing was for Business Opportunities but in no event shall the Defendants knowingly commence any civil action against the Customer or the guarantor on a Virtual Terminal or where the predominant purpose of the Financing is for Business Opportunities. Nothing in this paragraph shall limit the Defendants' ability and rights to assert claims and take other appropriate action in any jurisdiction with respect to a proceeding initiated by a Customer.

29. Where the Defendants dismiss suits pursuant to paragraph 25 above, they shall give effective notice of the dismissal to the affected Customer and to each consumer reporting agency, as that term is defined in the Fair Credit Reporting Act (15 U.S.C. § 603), or business credit reporting agency, that the Defendants have informed of the judgment or suit or have reason to know regularly records the Defendants' suits or judgments in its files. Effective notice is notice given in the manner ordinarily provided by the Defendants to credit reporting agencies reasonably sufficient to remove or correct any negative effect on the Customer's credit rating that may exist due to the original

recording of the judgment or suit. Additionally, the Defendants shall furnish the notice to any other person or organization upon request of the Customer.

30. Within thirty (30) days after entry of this Final Judgment, the Defendants shall provide a Customer Notice to all pre-judgment Customers (1) with financing in any SBI product line, or (2) who receive, or have received within the six months prior to entry of this Final Judgment, any collection calls or letters from the Defendants or any collection agent of the Defendants. The notice shall be in the form shown in Attachment B to this Final Judgment, with appropriate paragraphs included as applicable to the particular Customer. The Customer Notice above shall be prepared by the Defendants and inserted into pre-paid, first class mail envelopes with a return address designated and format approved by the Commonwealth of Massachusetts on behalf of the States and Jurisdictions. The Defendants shall deliver the envelopes to the Massachusetts Attorney General, boxed and sorted appropriately for inspection and mailing. The Defendants shall provide the Commonwealth of Massachusetts on behalf of States and Jurisdictions with a computer readable list of Customers to whom the notices are being sent, including names, addresses, account numbers, product(s) financed, and indicators of the notice form and paragraph(s) used.

31. Within thirty (30) days after entry of this Final Judgment, where any lawsuit is pending in a forum not otherwise prohibited by this Final Judgment but where the Defendants have pled or argued in any manner based on contract language that would be inconsistent with paragraph 9 (b) above, the Defendants shall cease relying upon that argument, including filing at the first procedural opportunity, an appropriate pleading with the court that effectively withdraws the pleading or argument.

32. Where a Financing contract contains a provision for electronic funds transfers and the Customer notifies the Defendants that the Customer's account referenced in the contract was

established primarily for personal, family, or household purposes, the Defendants shall allow the Customer to choose an alternative means of payment upon request of the Customer. The Defendants may not charge the Customer for using the alternative means of payment unless the charge is expressly authorized by the Financing contract and is permitted by the EFTA, 15 U.S.C. § 1693, and Reg. E, 12 C.F.R. § 205.

IV. MONETARY PAYMENT

33. As recovery in this investigation, the Defendants shall pay the amount of One Million and 00/100 Dollars (\$1,000,000.00) to the States and Jurisdictions in twelve consecutive and equal monthly installments of \$83,334.00 (the "Monetary Payment"). The first payment of such consecutive monthly installments shall be made upon the Defendants' execution of the Massachusetts Final Judgment. All remaining payments shall be made on the 20th day of the month next commencing until the Monetary Payment has been made in full by the Defendants to the States and Jurisdictions. Such payments shall be made by electronic funds transfer, or certified or cashier's check made payable to the "Commonwealth of Massachusetts – Office of the Attorney General" and shall be tendered to the States and Jurisdictions to be distributed pursuant to the terms of this Final Judgment.

34. Upon payment of the monies described in the preceding paragraph, the Defendants shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the States and Jurisdictions pursuant to the terms herein.

35. Upon receipt of payments made pursuant to paragraph 33 above, the Commonwealth of Massachusetts – Office of the Attorney General shall deposit all the funds into an interest-bearing account (hereinafter, the "Settlement Account") and be deemed custodian of the funds on behalf of

the States and Jurisdictions, and shall remain custodian of such monies until the terms of this Final Judgment are satisfied.

36. The Commonwealth of Massachusetts – Office of the Attorney General shall be the sole authorized agent on behalf of the States and Jurisdictions with power to open, disburse, and close the Settlement Account. On the ninety-fifth (95th) day after the receipt of each installment payment of \$83,334.00, or as soon as practicable thereafter, the Commonwealth of Massachusetts – Office of the Attorney General, on behalf of the States and Jurisdictions, shall disburse funds from the Settlement Account according to the Schedule attached hereto as Attachment E, “Disbursements to the States and Jurisdictions”.

37. The Defendants expressly waive any right to challenge any action or inaction by any of the States and Jurisdictions with regard to the receipt, retention, disbursement, or other payment made or received from or to the Settlement Account, and payments made to the States and Jurisdictions in accordance with this Final Judgment shall be disbursed in the sole discretion of each Attorney General or District Attorney who is a party to this Final Judgment.

38. The Office of the Attorney General for the State of Kansas shall receive as recovery in this matter \$90,000 from the Settlement Account in the form of twelve (12) consecutive monthly installments, each in the amount of \$7,500.06, commencing ninety-five (95) days following the entry of this Final Judgment.

39. The Attorney General for the State of Kansas shall allocate this sum pursuant to K.S.A. 50-632(a)(4) and for such other purposes provided by the Consumer Protection Act.

40. The Defendants agree that if the Defendants default on any monetary payment under this Final Judgment, the entire balance of the Monetary Payment becomes immediately due and owing, and the individual States and Jurisdictions shall be able to seek any remedies available at law

to recover the outstanding balance owed to the individual States and Jurisdictions, including but not limited to, statutory interest.

41. Service of process upon the Defendants for the purposes of enforcing the monetary portion of this Final Judgment in the event of default shall be effective upon mailing a notice via first class mail or facsimile transmission to the address provided in response to paragraph 60 below. If there is no response within ten (10) days, the State of Kansas may file a motion in this Court for an order entering a money judgment for the total sum due and owing to the State of Kansas under paragraph 38.

42. The Defendants agree to pay all reasonable attorneys' fees and costs, including but not limited to court costs, associated with any successful collection efforts under this Final Judgment by the States and Jurisdictions or their representative undertaken, after default, to collect the Monetary Payment.

43. In the event the Defendants, or either of them, should enter bankruptcy, the Defendants agree not to oppose any motion for the entry of orders granting relief from any stay for the Commonwealth to proceed to judgment in any civil action.

44. The Parties expressly warrant that in evaluating whether to execute this Final Judgment the Parties:

(a) represent that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to the Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and

(b) agree that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

45. The Defendants are receiving reasonably equivalent value, so as to take these

promises, covenants and obligations outside the purview of 11 U.S.C. § 548 (a)(1)(B)(i).

46. The Defendants shall give written notice of any bankruptcy filing to:

Division Chief
Consumer Protection/Antitrust Division
Office of the Attorney General
120 SW 10th Avenue, 2d Floor
Topeka, KS 66612-1597
Telephone: 785 296 3751
Facsimile: 785 291 3699

V. DISTRIBUTION OF JUDGMENT

47. For a period of five (5) years from the date of entry of this Final Judgment, the Defendants shall:

(a) Deliver a copy of the Massachusetts Final Judgment to all principals, officers, directors, and managers.

(b) Deliver a copy of Massachusetts Final Judgment to all employees who collect from Customers, and all employees who respond to Customer complaints or inquiries, and to all employees responsible for contacts with Dealers and Vendors.

(c) Deliver to all Dealers and Vendors a copy of those parts of the Massachusetts Final Judgment that include pages (1) and (2) and paragraphs 1, 2, 3, 4, 5, 6, 8, and 10 of the Massachusetts Final Judgment and the page with the judge's signature.

(d) Deliver to all assignees of Financing contracts subject to paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32 of the Massachusetts Final Judgment a notice stating that state court orders prohibit enforcement of certain provisions of the Financing contracts, if any, that conflict with paragraphs 9 (a) and (b) of this Final Judgment. This notice shall include the full text of paragraphs 9 (a) and (b).

(e) Deliver to third party debt collectors a notice stating that distant forum

collection suits and the enforcement of certain contract language are now prohibited by state court order, as set forth in paragraphs 3 (b) and 9 (a) and (b).

(f) The Defendants shall seek to secure from each of these persons or entities described in paragraphs 47 (a) - (e) above a signed and dated statement acknowledging receipt of the Massachusetts Final Judgment or notice. The Defendants shall deliver the Massachusetts Final Judgment or notice to current personnel and Dealers and Vendors who are to receive the Massachusetts Final Judgment within thirty (30) days after the date of entry of the Massachusetts Final Judgment, to assignees of Financing documents before the assignment is made, to new personnel or Dealers and Vendors within thirty (30) days after the person assumes the relevant position or responsibilities or, in the case of a Dealer or Vendor, associates with either of the Defendants.

The copies of the Massachusetts Final Judgment, or portions or notice thereof as required, shall be delivered in accordance with the terms of paragraph 47 and accompanied by a cover memorandum stating that Final Judgments with the same terms have been entered in state court in California, Florida, Illinois, Kansas, North Carolina, North Dakota, and Texas.

VI. ENFORCEMENT

48. Nothing in this Final Judgment shall preclude the State of Kansas from exercising any administrative, legal, or equitable remedies available to it to enforce the provisions of this Final Judgment. Failure to comply with any provision of this Final Judgment shall be deemed a violation of this Final Judgment, and any violation may subject the Defendants to civil penalties pursuant to K.S.A. 50-636, and/or civil or criminal contempt sanctions available under the laws of the State of Kansas. Upon such a violation, the Attorney General may take any and all steps available to enforce this Final Judgment including contempt.

49. As consideration for the relief agreed to herein, if the Attorney General determines that Defendants have failed to comply with any of the terms of this Final Judgment, the Attorney General will notify the Defendants in writing of such failure to comply, and the Defendants shall then have fourteen (14) days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit containing, at a minimum:

(a) a statement that Defendants are in full compliance with the Final Judgment; or

(b) a detailed explanation of how the alleged violation(s) occurred; and

(1) a statement that the alleged breach has been cured and how; or

(2) a statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (i) Defendants have begun to take corrective action to cure the breach, (ii) Defendants are pursuing such corrective action with due and reasonable diligence, and (iii) Defendants have provided the Attorney General with a detailed and reasonable time table for curing the breach.

Nothing herein shall prevent the Attorney General from agreeing in writing to provide the Defendants with additional time beyond the fourteen (14) day period to respond to the notice. Nothing in this paragraph is intended to relieve the Defendants of their obligations to make installments toward the Monetary Payment pursuant to paragraph 33.

50. Nothing in the preceding paragraph shall be construed to exonerate any contempt or failure to comply with any provision of this Final Judgment after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Final Judgment. Further, nothing in the preceding paragraph shall be construed to limit the

authority of the Attorney General to protect the interests of the State or the people of the State.

VII. RECORD KEEPING AND COMPLIANCE

51. For a period of five (5) years from the date of entry of this Final Judgment, the Defendants, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, shall create and maintain business records demonstrating compliance with the terms and provisions of this Final Judgment, including but not limited to:

(a) As to each Customer complaint of fraud, misrepresentation, debt collection practices, or relating to delivery of Equipment or Intangible Products, whether received directly or indirectly or through any third party, the records shall include, at a minimum, to the extent available after reasonable efforts:

1. The customer's name, address, telephone number, and account number;
2. The written complaint, if any, or a summary of any verbal complaint, and the date of the complaint;
3. The basis of the complaint, including the name of any person or entity complained of, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. In the event that no action is taken on the complaint, the reason for the inaction, or if action is taken, the basis for taking the action.

(b) As to each Dealer or Vendor:

1. Name, address, telephone number, and website address (if applicable); and

2. A listing of the products the Defendants are Financing and have financed.

52. In order that compliance with the provisions of this Final Judgment may be monitored:

(a) For a period of five (5) years from the date of entry of this Final Judgment, the Defendants shall notify the States and Jurisdictions of any changes in the corporate structure that may affect compliance obligations arising under this Final Judgment, including but not limited to, dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in acts or practices subject to this Final Judgment; the filing of a bankruptcy petition; or a change in the corporate name and address, at least thirty (30) days prior to the change, *provided* that, with respect to any proposed change in corporation about which the Defendants learn less than thirty (30) days prior to the date the action is to take place, the Defendants shall notify the States and Jurisdictions as soon as is practicable after obtaining that knowledge.

(b) Six (6) months after the date of entry of this Final Judgment, the Defendants shall provide a written report to the States and Jurisdictions, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Final Judgment.

(c) Upon written request by any representative of the States and Jurisdictions, the Defendants shall submit additional written reports (under oath, if requested) and produce documents on thirty (30) days' notice with respect to any conduct subject to this Final Judgment.

53. Nothing in this Final Judgment shall be construed to limit or modify the lawful powers of the Attorney General or the State to request, demand, or compel the production of documents or the testimony of witnesses. In addition, the Defendants shall permit representatives

from the States and Jurisdictions to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to the conduct subject to this Final Judgment. The person interviewed may have counsel present.

VIII. RELEASE FROM CIVIL PROSECUTION

54. In consideration of this Final Judgment and upon payment of monies as set forth herein, and except for such obligations as are created by this Final Judgment, the State releases the Defendants from any civil or administrative claims the State has or may have under the Consumer Protection Act, K.S.A. 50-623, *et seq.*, for the violations of law alleged in the Complaint filed herein.

55. Notwithstanding any of the terms of this Final Judgment, the State does not release the Defendants from: (a) any potential civil liability to the State for any violations of law other than those alleged in the Complaint filed herein; (b) any potential criminal liability, both corporate and individual, arising from the subject matter of this Final Judgment; and (c) any and all claims relating to obligations created by this Final Judgment.

56. The Monetary Payment made pursuant to this Final Judgment shall not be construed as punitive in nature or effect for any purpose, including purposes of any criminal prosecution. Nothing in this Final Judgment constitutes an agreement by the parties concerning the characterization of the amounts paid hereunder for purposes of any provisions of revenue laws of the State.

57. Nothing in this Final Judgment shall be construed as relieving the Defendants' duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

IX. PRIVATE RIGHT OF ACTION

58. This Final Judgment in no way creates or impairs any right of private action that any person may have against the Defendants. Nothing contained in this Final Judgment is intended to or

shall impair or create a private right of action or any rights or remedies in any person, association, entity, or otherwise, not a signatory to this Final Judgment, and it is agreed that no third party beneficiary rights or remedies are hereby created or impaired.

X. WAIVER OF APPEAL AND OF FINDINGS AND RULINGS

59. The Defendants waive all rights of appeal from this Final Judgment.

XI. NOTICES

60. On the day of entry of the Massachusetts Final Judgment, the Defendants shall provide the States and Jurisdictions with a current address, telephone number, and facsimile number where it can be contacted and served with process in the event of default until its monetary obligations under this Final Judgment are completed. The Defendants shall further be required to provide any new address, telephone number, and facsimile number within ten (10) days of relocating to a new address or of obtaining a new telephone/facsimile number. In addition, within thirty (30) days following the entry of the Massachusetts Final Judgment, the Defendants shall notify the States and Jurisdictions of the employee or corporate representative who will serve as a direct contact for the States and Jurisdictions for the resolution of Customer Complaints that are covered by the scope of this Final Judgment. Any notices or communications required to be transmitted between the Defendants and the State pursuant to this Final Judgment shall be provided in writing by first class mail or facsimile transmission to the parties or their successors as follows:

To The Attorney General
for the State

Division Chief
Consumer Protection/Antitrust Division
Office of the Attorney General
120 SW 10th Avenue, 2d Floor
Topeka, KS 66612-1597
Telephone: 785 296 3751
Facsimile: 785 291 3699

To the Attorneys for
Leasecomm Corporation
and MicroFinancial Incorporated

Richard J. McCarthy, Esq.
Edwards & Angell, LLP
101 Federal Street
Boston, MA 02110-1800
Tel: 617-951-2230
Fax: 617-439-4170

and

Mark A. Biberstein, Esq.
Foulston Siefkin, LLP
700 Bank of America Building
100 N. Broadway
Wichita, KS 67202
Tel: 316-291-9778
Fax: 316-267-6345

Any notices provided pursuant to the requirements of this Final Judgment shall be deemed given upon mailing or upon facsimile transmission.

XII. CONTINUING JURISDICTION

61. This Court retains jurisdiction of this action for the purpose of carrying out or modifying the terms of this Final Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the State of Kansas.

XIII. MISCELLANEOUS

62. The provisions of this Final Judgment shall be severable and should any provision be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Final Judgment shall remain in full force and effect.

63. This Final Judgment does not constitute an approval by the State of any of the Defendants' business acts and practices, and the Defendants shall make no representations to that

effect.

64. This entry of this Final Judgment is consented to solely for purposes of compromise and settlement of the allegations in the Complaint filed herein, and to avoid the risks and expenses associated with further investigation, and does not constitute evidence of, or an admission of, any liability or wrongful conduct.

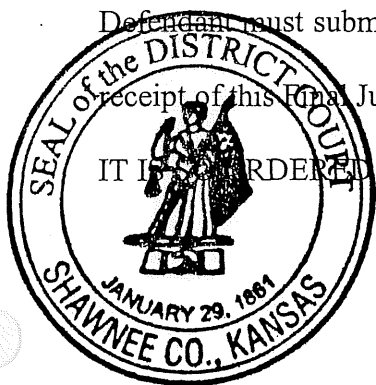
65. This Final Judgment contains the complete agreement between the parties. No promises, representations or warranties other than those set forth in this agreement have been made by either party. This Final Judgment supersedes all prior communications, discussions, or understandings, if any, of the parties, whether written or oral. This Final Judgment may not be changed, altered, or modified, except in writing signed by the parties and approved by the Court or by further order of the Court.

66. This Final Judgment becomes effective upon execution by the parties and entry by the Court.

67. The provisions of this Final Judgment are binding upon the Defendants, and their officers, agents, servants, employees, and attorneys and all other persons or entities in active concert or participation with them, who receive actual notice of this Final Judgment by personal service or otherwise.

68. Within ten (10) days of receipt of this Final Judgment as entered by the Court, each Defendant must submit to the States and Jurisdictions a truthful sworn statement acknowledging receipt of this Final Judgment.

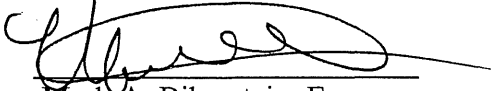
IT IS ORDERED AND ENTERED



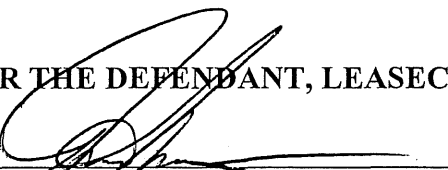
STATE OF KANSAS, COUNTY OF SHAWNEE
I hereby certify the above and for CHARLES E ANDREWS
a true and correct copy, the original of which
is filed and entered of record in the court
Dated 07/29/03
[Signature]
CLERK of the DISTRICT COURT
DEPUTY

**COUNSEL FOR LEASECOMM CORPORATION
AND MICROFINANCIAL INCORPORATED**

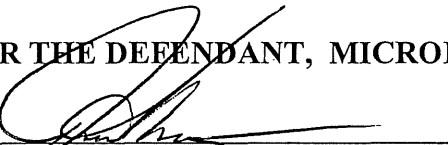
Mark A. Biberstein, #~~2919778~~ 15547
Foulston, Siefkin, LLP
700 Bank of America Building
100 N. Broadway
Wichita, KS 67202
Tel: 316-291-9778

By:  Date: 5-23-03
Mark A. Biberstein, Esq.


FOR THE DEFENDANT, LEASECOMM CORPORATION

By:  Date: 5/19/03
Richard F. Latour
Exec V.P. COO/CFO
10M Commerce Way, Woburn, MA

FOR THE DEFENDANT, MICROFINANCIAL INCORPORATED

By:  Date: 5/19/03
Richard F. Latour
President & CEO
10M Commerce Way, Woburn, MA

COUNSEL FOR THE PLAINTIFF


James R. McCabria, #16563
Assistant Attorney General
Kansas Judicial Center
Topeka, Kansas 66612-1597
(785) 296-3751