

E-04-000020

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K.S. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS.

2004 APR -7 A 10: 06

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*, )  
PHILL KLINE, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
VisionTel Communications, LLC, )  
a/k/a Vision Laboratories, LLC )  
 )  
Defendant )

Case No. 04 C505  
Div. 4

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 7<sup>th</sup> day of Apr., 2004, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through Stacy A. Jeffress, Assistant Attorney General. Defendant VisionTel Communications, LLC, appears by and through counsel Grant M. Glenn of Woner, Glenn, Reeder, Girard and Riordan, P.A.

WHEREUPON, the parties advise the Court 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 statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant VisionTel Communications, LLC, a/k/a Vision Laboratories, LLC, (hereinafter "VisionTel") is a Maine limited liability company with a principal place of business at 51 Dow Highway, #11, Eliot, Maine 03903. Defendant VisionTel is a supplier as that term is defined by K.S.A. 50-624(j) (2003 Supp).

4. At all times relevant hereto, and in the ordinary course of business, Defendant VisionTel engaged in consumer transactions as defined by K.S.A. 50-624(c) (2003 Supp.).

5. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* Defendant is subject to jurisdiction of the court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a). Venue is proper in the Third Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).

6. At all times relevant hereto, Defendant VisionTel solicited consumers to purchase its goods and services through various means, including but not limited to print advertisements in Kansas newspapers and inbound telemarketing promotions.

7. The Attorney General alleges Defendant violated the Kansas Consumer Protection Act by engaging in the following acts and practices in conjunction with the solicitation and operation of its business:

- a) Defendant VisionTel sold discount cards in Kansas which failed to state in bold and prominent type that such discount is not insurance on all advertisements and discount cards, in violation of K.S.A. 50-1,101(b)(1);

- b) Defendant VisionTel failed to have separate contracts with each health care provider or network of providers listed in conjunction with the discount card in violation of K.S.A. 50-1,101(b)(2);
- c) Defendant VisionTel failed to provide each prospective customer before purchase or at the time of confirmation required by K.S.A. 50-672 a written list for each type of service offered in conjunction with the discount card containing the name, address, and phone number of the closest 25 health care providers in the prospective customer's service area that are contractually bound to honor the discount card, in violation of K.S.A. 50-1,101(b)(4)(A), or in the alternative, to provide customers a 30-day right to cancel and a written list of the closest 25 health care providers in the prospective customer's service area that are contractually bound to honor the discount card within seven calendar days of the transaction, in violation of K.S.A. 50-1,101(b)(4)(B);
- d) Defendant VisionTel failed to maintain a surety bond in the amount of \$50,000 issued by a surety company authorized to do business in Kansas, or establish a surety account in the amount of \$50,000 at a federally insured bank, savings and loan association, or federal savings bank located in Kansas, in violation of K.S.A. 50-1,101(b)(6); and
- e) Defendant VisionTel failed to designate a resident agent who is a resident of Kansas for service of process and is registered with the Kansas secretary of state's office, in violation of K.S.A. 50-1,103.

All of the above acts constitute unconscionable acts and practices under the Kansas Consumer Protection Act and amendments thereto and shall be subject to any and all rights and remedies and enforcement provisions of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-1,105.

8. Defendant VisionTel agrees to this Consent Judgment without trial or adjudication of any issue of fact or law for settlement purposes only. Further, Defendant VisionTel specifically denies each act or that any described act constitutes a violation of law or that any intent to willfully commit any act or practice prohibited by the Kansas Consumer Protection Act existed.

9. Defendant VisionTel agrees to entry of judgment as follows:

- a) Defendant VisionTel shall be permanently enjoined from any of the practices described in Paragraph 7 above;

- b) Defendant VisionTel has already provided full refunds to the 87 Kansas consumers who purchased its Discount Care America program from Defendant. Defendant VisionTel has already provided Plaintiff a written list of said consumers, including their names, addresses, phone numbers, amounts paid to Defendant, and amounts of refunds paid to them by Defendant. Further, Defendant VisionTel has already provided a sworn statement that these 87 consumers constituted the entire universe of Kansans who were enrolled in the Discount Care America or in any health-related discount card program with the Defendant in the State of Kansas as of July 21, 2003;
- c) If the Attorney General has a basis to bring another action alleging violations of this Consent Judgment or alleging violations of a type and kind similar in nature to those alleged herein that, upon a finding by the Court that such violations have occurred, Defendant VisionTel agrees to stipulate to civil penalties in the amount of \$10,000.00 per violation and an order permanently enjoining the company from doing business of a type and kind similar in nature to that of Discount Care America within the State of Kansas; and
- d) No civil penalties will be assessed for violation of the Kansas Consumer Protection Act against Defendant VisionTel unless and until evidence of the sale of health care-related discount cards to anyone other than the 87 consumers listed by Defendant pursuant to Paragraph 9(b) is presented to Plaintiff.

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

11. Nothing in this Consent Judgment shall be interpreted to prevent any consumer from pursuing such remedies at law as are not inconsistent with the provisions hereof.

12. Defendant VisionTel agrees to be permanently enjoined from entering into, forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship,

or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

13. 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 hereof.

14. 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.

15. Compliance with this Consent Judgment does not relieve Defendant VisionTel 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. Defendant VisionTel further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendant in promoting, soliciting, or selling its services or any business associated therewith upon belief that such activity is being promoted or operated in a fashion that otherwise violates the law.

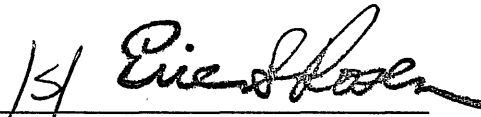
16. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant VisionTel nor shall Defendant VisionTel represent the decree as such an approval.

17. Pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7), the judgment herein is not dischargeable.

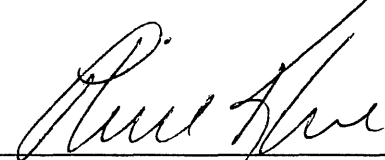
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court.

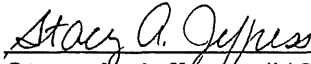
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Judge of the District Court

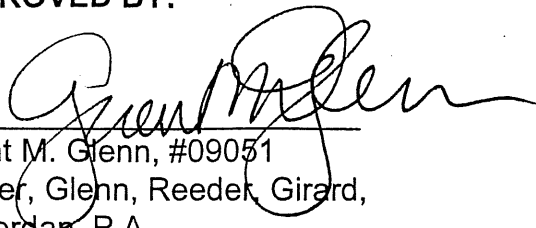
**PREPARED AND APPROVED BY:**

  
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