

E-04-000014

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CLERK OF DIST. COURT  
18TH JUDICIAL DISTRICT  
SEDGWICK COUNTY, KS

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Assistant Attorney General  
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BY \_\_\_\_\_

**IN THE EIGHTEENTH JUDICIAL DISTRICT  
DISTRICT COURT OF SEDGWICK COUNTY, KANSAS  
CIVIL DEPARTMENT**

STATE OF KANSAS, *ex rel.* )  
PHILL KLINE, Attorney General, )  
 )  
and )  
 )  
NOLA FOULSTON, District Attorney, )  
Eighteenth Judicial District of Kansas )  
 )  
Plaintiff, )

) Case No. 04-CV-0700

VALENTINE WICHITA, LLC )  
d/b/a GREAT EXPECTATIONS, )  
VALENTINE KANSAS CITY, LLC )  
d/b/a GREAT EXPECTATIONS, )  
MICHAEL HOLLAND, an Individual )  
ROBERT RANCE, an Individual )  
NIKKI SADE, an Individual )  
CHRISTINA MORGAN, an Individual )  
JODY JOHNSON, an Individual )  
JULES SEELEN, an Individual )  
 )  
Defendants. )

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW, on this 17<sup>th</sup> day of **February**, 2005 the above matter comes on for disposition on the joint motion of the Plaintiffs and Defendants Valentine Kansas City, LLC, Michael Holland, Robert Rance, Nikki Sade, Christina Morgan, Jody Johnson and Jules Seelen (hereafter referred to as Defendants), for approval by the Court of a Consent

Judgment, pursuant to K.S.A. 50-632. The Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General of the State of Kansas appears by and through James R. McCabria, Deputy Attorney General. The plaintiff, the State of Kansas, *ex rel.* Nola Foulston, District Attorney for the Eighteenth Judicial District of Kansas appears by and through Sharon A. Werner, Assistant District Attorney of the Eighteenth Judicial District of the State of Kansas. The Defendants appear by and through Jay F. Fowler, of the law firm Foulston Siefkin, LLP. There are no other appearances

THEREUPON, the Court, after being duly advised in the premises, and after hearing the statements of counsel, makes the following findings, to-wit:

1. Phill Kline is the Attorney General of the State of Kansas. Nola Tedesco Foulston is the District Attorney for the Eighteenth Judicial District.

2. The Attorney General's and District Attorney'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. Defendants are correctly identified as alleged in the Second Amended Petition filed herein. Shelley Sade has been previously dismissed as a party to this action pursuant to a separate Order entered herein. Defendant Valentine Wichita, LLC d/b/a Great Expectations ("Valentine Wichita") filed for bankruptcy on December 10, 2004 and the parties all agree that this Consent Judgment shall not apply or be interpreted to affect or resolve any issues as to Wichita Valentine.

4. Defendants are each suppliers within the definition of K.S.A. 50-624(j) and at all relevant times have engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c). The nature of Defendants business is selling and soliciting consumers to enter into dating service contracts. Solicitation of such sales occurs, *inter alia*, through direct marketing and telemarketing.

5. Defendants each admit that this Court has personal and subject matter jurisdiction over all matters and parties hereto.

6. The purpose of this Consent Judgment is to resolve all issues that have been alleged by the Plaintiffs by virtue of the Second Amended Petition that was filed herein on July 23, 2004, except those as to Valentine Wichita. To the extent the named consumers

in Exhibit A to this Consent Judgment are awarded restitution, any claims for restitution of those consumers shall be deemed satisfied.

7. In soliciting and consummating the consumer transactions in connection with the consumers who have been specifically identified in the attached Exhibit "A" (hereinafter identified as "named consumers"), Defendants admit the following violations of the Kansas Consumer Protection Act:

a) K.S.A. 50-626(a) and/or K.S.A. 50-627(a) - Defendants, individually and/or through the acts of its agents, committed deceptive acts in connection with various consumer transactions in that they represented to the named consumers, knowingly or with reason to know, that it was the practice of the business to conduct and perform criminal background checks on all prospective members when, in truth and in fact, no such criminal background checks were performed at the time on any prospective member. Such statements constitute a misleading statement of opinion on which the named consumer was likely to rely to the consumer's detriment.

b) K.S.A. 50-626(a) and/or K.S.A. 50-627(a)- Defendants, individually and/or through the acts of its agents, committed deceptive acts in connection with various consumer transactions in that they represented to the named consumers, knowingly or with reason to know, that if the named consumer would purchase a membership, the business would be able to provide access to a certain number of members in its database when, in truth and in fact, the actual number of members that would be available to the named consumer were materially fewer than what was represented to the named consumer. Such statements constitute a misleading statement of opinion on which the named consumer was likely to rely to the consumer's detriment.

c) K.S.A. 50-626(a) and/or K.S.A. 50-627(a)- Defendants, individually and/or through the acts of its agents, committed deceptive acts in connection with various consumer transactions in that they represented to the named consumers, knowingly or with reason to know, that if the named consumer would purchase a membership, the named consumer would receive a certain number of dates or meet a particular type and quality of person when, in truth and in fact, the Defendants had no reasonable basis to substantiate such representations. Such statements constitute a misleading statement of opinion on which the named consumer was likely to rely to the consumer's detriment.

d) K.S.A. 50-626(a) - Defendants made use of form contracts which contained the following language when, in truth and in fact, Defendants knew or had reason to know that representations to the contrary were being made to the named consumers:

"G/E DOES NOT CONDUCT ANY INVESTIGATION WHATSOEVER INTO ANY MEMBER'S MEDICAL, PROFESSIONAL, OR CRIMINAL HISTORY AND HAS NO DUTY TO CONDUCT SUCH INVESTIGATION. G/E MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE TO YOU ABOUT ANY OF THESE TOPICS OR ABOUT...THE QUALITY, QUANTITY, DEMOGRAPHIC CHARACTERISTICS, FINANCIAL CONDITION OR OTHER FEATURES OF OUR MEMBERS OR MEMBERSHIP"

The admissions set forth above are limited to the consumers identified in Exhibit A. This admission does not constitute an admission of any wrongful act, misrepresentation or violation of the Kansas Consumer Protection Act as to any other person.

8. Defendants further agree that each of the statements in paragraph Seven, above, concerned a fact material to the consumer transaction at issue. Defendants agree to be permanently enjoined from doing or committing those acts or practices described in Paragraph Seven in any future transactions as to any consumer, whether or not named herein.

9. Plaintiffs maintain, and Defendants deny, that were this matter to be litigated, the following additional violations could be proven:

a) K.S.A. 50-626(a) - Defendants made use of direct mailers which represented that a prospective member who purchased dating service contract from Defendants would have a "safe" dating environment if dating within the membership services of Defendants when, in truth and in fact, Defendants had no reasonable basis to substantiate such a representation.

b) K.S.A. 50-626(a) and/or K.S.A. 50-627(a) - Defendants, individually or through its agents, in connection with various consumer transactions, employed high-pressure sales tactics to intimidate or take advantage of a consumer's infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factor in sales presentations with some of the identified consumer transactions.

10. Plaintiffs agree that any remaining claims shall be withdrawn and dismissed, including those claims that Defendants violated the Kansas No-Call Act.

11. The parties have further agreed as follows:

a) Within 6 months of the date of settlement, Defendants shall either cease direct mailing in Kansas, or shall remove from any direct mail pieces any reference to the ability of Defendants to provide a "safe" dating environment as opposed to, for example, a "safer" dating environment;

b) Defendants shall cause to be placed in a conspicuous location in the reception area visible to prospective consumers during regular business hours of any retail sales outlet where they may conduct business within this state a sign that discloses the total current number of members that have joined at that location and are available for selection on that date to any other consumer that purchases a basic membership at that location;

c) Defendants shall cause to be recorded the entirety of any and all sales presentations that occur at any retail outlet within the state of Kansas, and shall agree to maintain that recording and make the same available to the Attorney General or District Attorney for the period of time that the consumer originally contracted to be a member;

d) During a sales presentation to a consumer, Defendants shall not make a representation of any particular outcome or any particular success or of any other matter that is contrary to the provisions of the contracts it presents to consumers;

e) For all sales presentations to prospective members, Defendants shall provide to the consumer a written, published price list that reflects the actual current prices at which memberships or other features are offered for sale prior to the signing of any contract for purchase for the same. Such prices (and any savings that are represented to a consumer) shall be capable of being substantiated by Defendants;

f) Prior to any prospective member being asked to sign a membership contract, Defendants shall provide a Notice on a separate document that substantially advises the consumer of the facts set forth in Exhibit B, attached hereto, and shall orally advise the prospective member of those same facts.

g) This paragraph shall not be interpreted to create liability on or for any individual defendant for violations of any provision of this paragraph which may be committed by any other defendant. To the extent that vicarious liability may exist under other legal theories in the event any one defendant violates these provisions, nothing herein shall be interpreted to limit such theories or liability against the remaining defendants.

12. Defendants agree to the entry of judgment against each of them in the amount of \$315,111.00. Said judgment consists of the following amounts:

a) One Hundred and Eleven dollars in Court costs;

b) Two-Hundred Fifteen Thousand (\$215,000.00) to be used to satisfy claims for restitution to the named consumers. Within ten days of this amount being deposited in full with the Clerk of the Court, Plaintiffs shall submit to the Clerk a statement specifying the payments to be made to the individual named consumers in accordance with their interests as shown on such statement. In the event the total restitution figure is less than \$215,000, any difference shall be regarded as additional investigative fees and expenses payable to Plaintiffs.

c) Investigative fees and expenses on behalf of Plaintiff in the amount of \$100,000.00 (and any additional amounts set forth in paragraph 12b above).

d) The parties have agreed that each of the Defendants shall be jointly and severally liable for this judgment but only in the percentages indicated until the judgment be satisfied in full:

- |      |                            |      |
|------|----------------------------|------|
| i)   | Valentine Kansas City, LLC | 100% |
| ii)  | Michael Holland            | 100% |
| iii) | Robert Rance               | 100% |
| iv)  | Nikki Sade                 | 28%  |
| v)   | Christina Morgan           | 13%  |
| vi)  | Jody Johnson               | 14%  |
| vii) | Jules Seelen               | 19%  |

The percentages shall apply to the obligation on any unpaid balance due in the event of default on any payment or payments required under this Consent Judgment.

13. The above judgment shall be paid as follows:

a) Court Costs in the amount of \$111.00 made payable to the Clerk of the District Court, upon the filing of this Consent Judgment.

b) Payment of restitution in the amount of \$215,000.00 as follows:

i) One-Hundred Seventy-Five Thousand Dollars (\$175,000.00) made payable to the Clerk of the District Court, upon the filing of this Consent Judgment

- ii) Forty Thousand Dollars (\$40,000.00) made payable to the Clerk of the District Court, on or before the close of business on March 29 2005;
- c) Payment of Investigative Fees and Costs in the amount of \$100,000 as follows:
  - i) Ten Thousand Dollars (\$10,000.00) made payable to the Clerk of the District Court on or before the close of business of the first business day of each month beginning May 1, 2005, and continuing on the first day of each month thereafter for nine additional months. Upon receipt of each payment, the Clerk shall distribute the same in equal amounts to the State Attorney General's Office and the Consumer Fraud Investigative Fund of the District Attorney's Office

14. As part of the agreement between the parties, Plaintiffs dismiss any request for assessment of civil penalties and none are herein ordered.

15. The parties agree that Plaintiff shall not attempt to execute on any part of any judgment entered herein pending payment to the Clerk as set forth in paragraph Thirteen. In the event Defendants fail to make any payment as set forth in paragraph Thirteen, Plaintiffs may elect to execute on said judgment and, in such event, the Defendants each agree to submit themselves to the jurisdiction of this court in connection with all necessary proceedings to collect said judgment.

16. The defendants agree that the contracts of each of the consumers identified in Exhibit A shall be and are hereby voided and that said consumers owe nothing further in connection with said agreements. Further, to the extent Defendants have referred for collection any part of said contracts to Belmont Services or any other collection service, Defendants shall take all necessary action to cause such collection action to cease immediately and to delete any adverse credit report which may have previously made to any credit reporting agency..

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

18. Defendants agree 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.

19. Defendants further agree that pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7), and due to the nature of the conduct underlying this settlement, the judgment herein shall not be dischargeable in any federal court bankruptcy proceeding commenced after the entry of this judgment.

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 hereof.

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 this Consent Judgment preclude the Attorney General or District Attorney from taking appropriate legal action to enforce civil or criminal statutes under their jurisdiction. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General or District Attorney from taking further action against Defendants in operating this or any other business upon belief that the business is being promoted or operated in a fashion that otherwise violates the law.

23. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General or the District Attorney 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 or District Attorney to take any action in response to any information which they now have in their possession and may believe forms the basis for a violation of this 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.

24. Nothing in this Consent Judgment shall be construed to limit the rights of any consumer not identified by name in Exhibit A from pursuing any and all legal remedies which they may be entitled to assert.

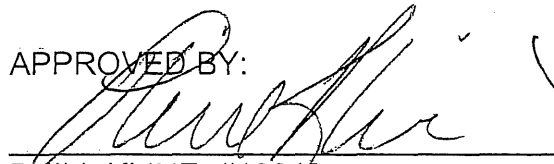
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulations and agreements of the parties contained herein are found to be reasonable and are hereby adopted and approved as the findings of fact and conclusions of law of the Court.

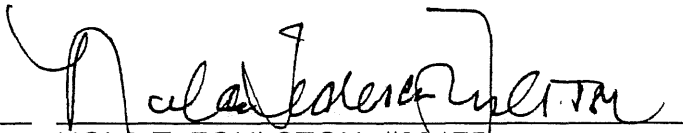
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

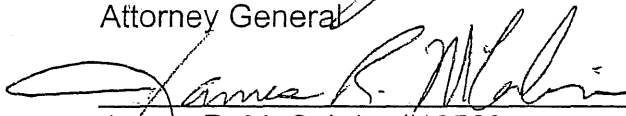
**IT IS SO ORDERED.**

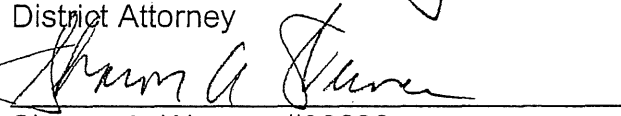
  
\_\_\_\_\_  
Judge of the District Court

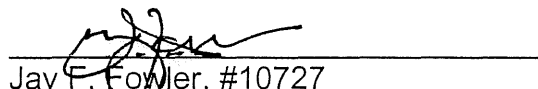
APPROVED BY:

  
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