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FILED BY CLERK  
DISTRICT COURT  
JUDICIAL DISTRICT  
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TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 12

STATE OF KANSAS, *ex rel.* )  
CARLA J. STOVALL, Attorney General )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TRULY SPECIAL, INC., *et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 94-CV-1429

**JOURNAL ENTRY OF CONSENT JUDGMENT**  
**PURSUANT TO K.S.A. 50-632(b)**

NOW on this \_\_\_\_ day of \_\_\_\_\_, 1996, the plaintiff's motion for approval of consent judgment comes before the Court for consideration. The State of Kansas appears by and through James J. Welch, Assistant Attorney General. Defendants, Michael Cooper and Melvin McCall appear by and through their counsel Michael G. Quinn. There are no other appearances.

In lieu of investigating or continuing the action, the signing parties acquiesce in and accept this consent judgment with respect to acts and practices alleged in this lawsuit to be violations of the

Kansas Consumer Protection Act. The consent judgment entered into herein, pursuant to law, shall not be deemed to admit a violation of the Consumer Protection Act by any consenting defendant.

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

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. Defendant Michael Cooper is an individual who was President of Defendant Truly Special, Inc. during the time the acts alleged in paragraph eight occurred.
3. Melvin McCall is an individual who was General Manager of Defendant Truly Special, Inc. during the time the acts alleged in paragraph eight occurred.
4. Defendants Cooper and McCall admit that the Court has personal and subject matter jurisdiction of the signing parties.
5. Defendants Cooper and McCall were suppliers within the definition of the Kansas Consumer Protection Act, K.S.A. 50-624(i).
6. Defendants Cooper and McCall have engaged in consumer transactions, as defined by K.S.A. 50-624(c).
7. Defendants Cooper and McCall participated in and developed a sales program for the purpose of distributing products manufactured by Briarwood Farms and others by Defendant Truly Special, Inc.
8. The Attorney General alleges the following acts and practices by Defendants Cooper and McCall were deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:
  - a. Defendants have engaged in multiple deceptive acts by making representations knowingly or with reason to know that the consumer would receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for

giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, where receipt of the benefit is contingent upon an event occurring after the consumer enters into the transaction. Consumers were induced into paying to join the Truly Special plan with the promise that the consumer will receive a future bonus for finding additional persons who are willing to join the program. The promotion and implementation of a referral sales scheme constitute multiple deceptive acts in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) as defined in K.S.A. 50-626(b)(1)(E).

- b. Defendants have willfully failed to state a material fact, or willfully concealed, suppressed or omitted a material fact by failing to explain market saturation and its impact on future earnings in oral and written representations of the Truly Special sales referral scheme. Consumers are induced into paying to join the Truly Special plan with the promise that they can earn up to \$100,000.00 per year on a \$100.00 investment. Future wealth and earnings are strenuously emphasized during recruitment meetings and teleconference calls. The money received in return for the investment was derived from the recruitment of additional members, and not from retail product sales. Defendants did not explain to consumers the eventual economic and mathematical failure of such a pyramid system due to market saturation. Thus, consumers were unaware that those recruited last in the system would have little chance of finding additional investors. Such failure constitutes multiple deceptive acts, in violation of the Kansas Consumer Protection Act, K.S.A. 50-626(a) as defined in K.S.A. 50-626(b)(3).

9. Defendants Cooper and McCall agree to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent Judgment, and Defendants Cooper and McCall agree that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

10. Defendants Cooper and McCall agree to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, as it now exists or as amended in the future and Defendants Cooper and McCall agree that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

11. Defendants Cooper and McCall also agree to provide and allow for a three-day cancellation period as provided by K.S.A. 50-640 in any future transactions constituting a door-to-door sale under K.S.A. 50-640. Failure to provide the three-day cancellation period shall constitute a violation of this Order.

12. Defendants Cooper and McCall agree to pay reasonable expenses and investigation fees to the Office of the Attorney General in the amount of \$1,500.00 each at the time of signing this consent judgment. Payment will be by certified check.

13. Defendants agree to pay civil penalties to the Office of the Attorney General in the amount of \$1,000.00 each at the time of the signing this consent judgment. Payment will be by certified check.

14. Nothing in regard to this consent judgment shall allow the defendants to imply or state at any time that the Kansas Attorney General has approved of, endorsed, or sanctioned any marketing plan or sales presentation, nor shall this consent judgment serve as an admission by the state, nor shall it serve as a stipulation in any future proceeding.

15. The provisions of this consent judgment will be applicable to Defendants Cooper and McCall and every agent, representative or employee of Defendants Cooper and McCall.

16. Defendants Cooper and McCall agree to make available and/or disclose the provisions of this consent judgment to its current and future employees, agents and representatives for two years from the date of the execution of this judgment.

17. Compliance with this consent judgment does not relieve Defendants Cooper and McCall of any obligation imposed by applicable federal, state or local laws, nor shall the Attorney

General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction for anything other than the subject matter of this consent judgment.

18. Defendants Cooper and McCall consent to personal and subject matter jurisdiction in Kansas for the purpose of enforcing this consent judgment.

19. Defendants Cooper and McCall agree that a breach of this consent judgment may subject them to legal action by the State of Kansas.

20. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

21. 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.

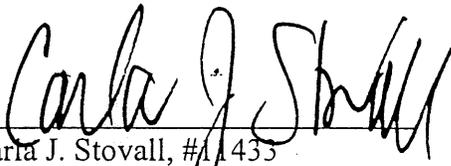
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court.

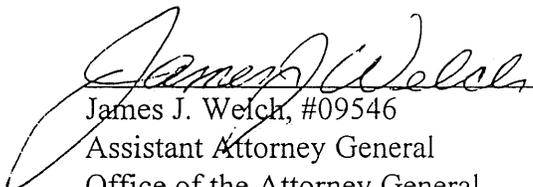
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

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ERIC ROSEN, District Judge

APPROVED BY:

  
\_\_\_\_\_  
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Attorney for Plaintiff

  
\_\_\_\_\_  
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Melvin M. McCall

Melvin McCall

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