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KS. DISTRICT COURT
3RD JUDICIAL DISTRICT

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TOPEKA, KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 11

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General,

Plaintiff,

vs.

THE FURST GROUP, INC.

Defendants.

Case No. 98 CV 920

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this ___ day of June, 1998, the Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Kristy L. Hiebert, Assistant Attorney General. Defendant, The Furst Group, Inc., appears by and through Robert T. Stephan. Whereupon the parties advise the court that they have stipulated and agreed to the following:

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

3. Defendant, The Furst Group, Inc., is a foreign corporation organized under the laws of the State of New Jersey. The principal office of the corporation is located at 459 Oak Shade Rd, Shamong, New Jersey, 08088. The Furst Group, Inc., applied with the Kansas Secretary of State for authority to do business in Kansas in October 1992 by filing a Foreign Corporation Application.

4. Pursuant to its Foreign Corporation Application, The Furst Group, Inc., may be served with process by serving its registered agent The Corporation Company, 515 South Kansas Ave, Topeka, KS 66603.

5. Defendant admits that the Court has jurisdiction over the parties and the subject matter.

6. Venue is proper in Shawnee County because an act or practice alleged to be a violation of the Kansas Consumer Protection Act occurred in such county and because Defendant has no principal place of business in the State of Kansas.

7. Defendant is engaged in business as a reseller and/or aggregator of long distance telecommunication services, including both intrastate and interstate service, hereinafter referred to as "long distance service," to Kansas consumers.

8. The Furst Group, Inc., controls the nature, quality and price of the long distance services provided to its customers.

9. The long distance service provided by The Furst Group, Inc., was carried on AT&T facilities or lines during the period of time in which the Attorney General received and investigated complaints regarding The Furst Group, Inc.

10. Beginning at a time unknown to Plaintiff but at least since September 1992, Defendant, through its agents, employees and representatives, has been conducting telemarketing contacts with Kansas consumers, many of them small businesses, in an effort to induce consumers

to use their long distance service.

11. The Furst Group, Inc., is not an agent, subsidiary, corporation, or partner of AT&T.

12. "Slamming" refers to the unauthorized switching of one's long distance service from their chosen carrier.

13. Defendant is a supplier within the definition of K.S.A. 50-624(i) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

14. The Attorney General alleges that the Defendant, its agents and representatives, committed deceptive and unconscionable acts and practices in consumer transactions in violation of K.S.A. 50-626 and K.S.A. 50-627, including, but not limited to:

- a. Misrepresenting to consumers that Defendant's representatives are agents of or are representing AT&T, or otherwise implying that The Furst Group, Inc., is AT&T or a part of AT&T;
- b. Misrepresenting to consumers that Defendant's solicitation calls are calls by AT&T offering special discounts, that consumers would remain a direct customer of AT&T, and that Defendant is with AT&T and is contacting consumers to verify their billing information;
- c. Switching consumers' long distance service carrier to The Furst Group, Inc., when Defendant was told by consumers that they wanted to stay with their present long distance carrier;
- d. Failing to disclose to consumers that there is a charge for switching their long distance carrier, that the purpose of the call is to invite the consumer to switch the consumer's long distance carrier to The Furst Group, Inc., and that the caller represents The Furst Group, Inc., a reseller and competitor of AT&T in the long distance service market.

15. Defendant, by entering into this Consent Judgment, makes no admission of liability as to any practice set forth in paragraph fourteen (14) herein, and specifically denies that Defendant has engaged in any violation of law as alleged. This Consent Judgment does not constitute any evidence or admission of any kind regarding any issue set forth herein. Additionally, by entering into this Consent Judgment, Defendant states that the concerns of the State of Kansas, alleged in paragraph fourteen (14) above, were often caused by the action or inaction of AT&T and were not a result of any conduct by The Furst Group. Plaintiff agrees to conclude its current civil enforcement effort, and agrees not to commence further civil enforcement efforts against Defendant based upon the past conduct and claims set forth in paragraph fourteen (14) of this Consent Judgment, or any past conduct of a similar nature, except as to any factual matters which may have been concealed from Plaintiff by Defendant.

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

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

18. The Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director and employee of management level that is involved in Kansas operations of The Furst Group, Inc., within ten days of signing the Consent Judgment.

19. The Defendant agrees to refrain from and to be permanently enjoined from engaging in all deceptive and 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, including, but not limited to, those acts or similar acts set forth in this Consent Judgment and Defendant agrees that engaging in any such prohibited acts shall be a violation of this order.

20. For each consumer who has filed a complaint with the Attorney General's Office

prior to the date of this Consent Judgment regarding a switch in their long distance carrier which occurred prior to the date of this Consent Judgment, Defendant agrees to provide the relief set forth for each consumer in Exhibit 1, attached hereto and incorporated herein as though fully set forth herein. Any refunds required in Exhibit 1 shall be provided to the Office of the Attorney General in checks made payable to such consumers within thirty (30) days of the date of this Consent Judgment. If Exhibit 1 provides that the complainant has not paid The Furst Group, Inc., and has outstanding bills, Defendant will credit the account so that it has a zero balance. Defendant will also reimburse such complainants for any switching charges incurred. Defendant also agrees that no negative credit information has been or will be reported to any credit reporting agency for nonpayment of a bill from The Furst Group, Inc., for such complainants. Defendant agrees to take all action necessary to remove and correct any negative information already reported related to a switch by The Furst Group and subsequent billing for such complainants, and agrees to forego any collection of present outstanding amounts owed to The Furst Group, Inc. by the listed consumers.

21. For any future complaints filed with the Office of the Attorney General within 60 days of the filing date of this Consent Judgment regarding a switch of long distance services, whether such switch occurred before or after the date of this Consent Judgment, Defendant agrees to resolve such complaints in the following manner:

- a. Seventy-five days following the filing of this Consent Judgment, the Attorney General shall forward all complaints which allege that the complainants' PIC change was made without authorization or was based on misrepresentation.
- b. As to any complaints not previously adjusted in this manner, the Furst Group shall adjust these complaints by sending the complainant a payment which includes the following ("Adjustments"):

- (1) reimbursement of all payments (switching charges) made by complainant to change to The Furst Group and to change back to the complainant's preselected PIC, including fees charged by the consumers' local exchange carrier, to the extent the complainant has not already been reimbursed by The Furst Group for such charges; and
 - (2) an amount equal to the difference between the rate of all long distance calls billed to the complainant by The Furst Group and the rate the complainant would have been charged by its long distance provider prior to the switch to The Furst Group if The Furst Group's rates were higher than those of the previous long distance service provider. This "re-rating" calculation should be based on all of the telephone bills from Furst Group to the complainant and the applicable tariff rate of the complainant's previous carrier as determined from the last bill received by that previous carrier. Notwithstanding the provisions of this subparagraph, The Furst Group shall be allowed to offset any amounts owed under the rerating provisions set forth above as a result of any previously issued credits or refunds to the complainant.
- c. In the event that complainants eligible for re-rating fail to provide The Furst Group with either (i) a copy of the complainant's last phone bill for long distance service prior to switching to The Furst Group or (ii) written permission for The Furst Group to contact the prior long distance carrier to obtain a copy of such bill or evidence of the applicable tariff rate, then The Furst Group shall inform the complainant that he/she is not eligible for re-rating. Said failure shall have no effect on the complainant's entitlement to a refund of any switching or service

charges under subparagraph (b)(1) above.

- d. The Furst Group shall send any payments to complainants within thirty (30) days of receipt of all information necessary to determine the amount of payment due a complainant. The payment shall be transmitted with a cover letter, a copy of which is attached hereto as Exhibit 2.
- e. As to all complainants entitled to Adjustments, if there is no outstanding balance, consumer refunds shall be by check drawn on an account of The Furst Group with a sufficient cash balance to fund all refunds and shall not consist of credits in any form. The Furst Group shall mail each complainant a refund by first class United States Mail. If there is an outstanding balance, the refund shall be credited against that balance.
- f. Within 120 days of the filing date of this Consent Judgment, the Furst Group shall provide to the Office of the Attorney General, Consumer Protection Division, an alphabetical listing of the names and addresses of all complainants to whom The Furst Group has provided Adjustments pursuant to this Consent Judgment, the date the Adjustments were provided, the documents used to calculate the Adjustment, and the total amount of Adjustments provided per consumer, pursuant to paragraphs 21 (a) and (b). In the event the Attorney General determines that there is a discrepancy in any payment, The Furst Group shall be notified of any such discrepancy and given five (5) business days to respond to the Attorney General, and The Furst Group and the Attorney General shall resolve any differences concerning the amount due and owing.

22. In each and every solicitation or contact with a potential customer, verbal or written, Defendant shall state at least once, before obtaining or verifying the customer's name,

address and phone number(s), the following:

- a. The representative, employee or agent's full name;
- b. That the representative, employee or agent is making contact on behalf of a company named The Furst Group;
- c. That the purpose of the contact is to obtain authorization by the consumer to switch their long distance service from their current carrier to The Furst Group. The words "switch" or "change" shall be used in the communication;
- d. That The Furst Group is not an agent of, acting on behalf of or a part of AT&T, Sprint, or MCI, unless such representation is true; provided, however, that this subparagraph shall only apply in the event reference to AT&T, Sprint or MCI is made by The Furst Group in connection with the solicitation; and
- e. That The Furst Group is a reseller of long distance services and a competitor or AT&T, Sprint and MCI; provided, however, that this subparagraph shall only apply in the event reference to AT&T, Sprint or MCI is made by The Furst Group in connection with the solicitation; and
- f. That there may be a service charge for switching long distance carriers and the amount, if known, shall be stated.

23. The Furst Group shall not switch a consumer's current long distance service provider to The Furst Group unless the consumer clearly represents that he or she is authorized to make the switch and does authorize the switch, and The Furst Group at a minimum complies with all Federal laws, statutes, rules and regulations, including but not limited to 47 C.F.R. 64.1100, as they now exist or as amended in the future and all Kansas laws, statutes, rules and regulations, as

they now exist or as amended in the future.

24. In addition to the minimum verification methods set forth above, within three (3) business days of a Kansas consumer's request for a change in long distance service, The Furst Group shall place a one-page letter clearly entitled "Switch in Long Distance Service Provider" in first-class United States mail to the consumer which clearly and conspicuously contains the following information:

- a. that the information is being sent to confirm a change in long distance service placed by the consumer within the previous week;
- b. that as a result of this change in telecommunications service, the consumer's long distance service provider will be The Furst Group, Inc.;
- c. the name of the consumer's underlying long distance carrier prior to the change, if known by The Furst Group, Inc.;
- d. The name of the consumer's new underlying long distance carrier, if applicable;
- e. any material terms, conditions, or charges that will be incurred, including but not limited to reoccurring monthly fees or minimum billing requirements;
- f. the name of the person ordering the change;
- g. the name, address and telephone number of both the consumer and The Furst Group; and
- h. the name, address and telephone number of a contact point at the Federal Communications Commission for consumer complaints.

25. The Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal

structures, for the purpose of avoiding compliance with the terms or this Consent Judgment.

26. The Defendant agrees to pay \$50,000.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas by paying \$30,000.00 at the time of signing the Consent Judgment and paying \$5,000.00 every 30 days thereafter until the amount is paid in full. Payments shall be made by cashiers' checks and shall be delivered to the Attorney General of the State of Kansas. Defendants agree that failure to make timely payments, as set out above, will result in the entire outstanding balance becoming due within five (5) days of the first payment missed. Defendants also agree that, in the event of a missed payment, failure to remit the entire outstanding balance within five (5) days shall constitute a violation of this Consent Judgment.

27. The Defendants agree to maintain all business records for a period of five years and to allow the Attorney General to inspect all of the Defendant's business records in the future.

28. 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.

29. 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.

30. Compliance with this Consent Judgment does not relieve the Defendant of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

31. The parties understand that this Consent Judgment shall not be construed as an

approval of or sanction by the Attorney General of the business practices of the Defendant nor shall the Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

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 judgment is entered against Defendant and in favor of Plaintiff in the amount of \$50,000.00.

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.

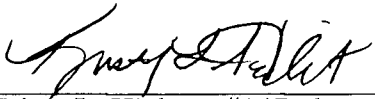
DISTRICT COURT JUDGE

Approved by:

PLAINTIFFS



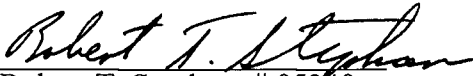
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