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TOPEKA KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 9

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

Plaintiff, )

vs. )

Case No. 98 CV 1075

MONTGOMERY WARD CREDIT )  
CORPORATION and )  
GENERAL ELECTRIC CAPITAL )  
CORPORATION, )  
both foreign corporations, )

Defendants. )

Petition Pursuant to K.S.A. Chapter 60

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 7<sup>th</sup> day of August, 1998, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through C. Steven Rarrick, Deputy Attorney General. Defendants Montgomery Ward Credit Corporation and General Electric Capital Corporation, appear by and through John M. Collins, LeBoeuf, Lamb, Greene, MacRae, L.L.P..

It appearing to the Court that Defendants Montgomery Ward Credit Corporation and General Electric Capital Corporation, without admitting liability, have consented, in the Consent attached hereto, to the entry of this Consent Judgment, and the Court finding both subject matter and personal jurisdiction, and the Plaintiff having determined that this Consent Judgment, including the payment provisions, is a fair and equitable resolution of the allegations contained in Plaintiff's Petition For Approval of Consent Judgment, IT IS HEREBY AGREED, ORDERED, ADJUDGED AND DECREED THAT:

**I. JURISDICTION**

- A. This Court has jurisdiction of the subject matter of this action and of the parties.

**II. VENUE**

- A. Venue as to all matters between the parties relating hereto lies in this Court.

**III. PARTIES**

A. Montgomery Ward Credit Corporation and General Electric Capital Corporation warrant and represent that they are proper parties to this Order.

B. Montgomery Ward Credit Corporation and General Electric Capital Corporation represent that their names are the true legal names of the entities entering into this Order.

**IV. SCOPE**

This Order shall apply to the practices of Defendants in soliciting, obtaining or enforcing Reaffirmation Agreements with Debtors, except that this Consent Judgment shall not apply to such practices in connection with credit extensions secured by real estate or motor vehicles.

## V. DEFINITIONS

A. "Affected Consumer" means each Debtor who: (i) filed a petition for relief under Chapter 7 of the Bankruptcy Code and received a discharge of a debt incurred as a Debtor; (ii) entered into a Reaffirmation Agreement with a Defendant during the period from January 1, 1993 to June 30, 1997; and (iii) whose Reaffirmation Agreement was not filed with the bankruptcy court or was not timely filed with the bankruptcy court or was timely filed with the bankruptcy court and was either (A) disapproved or rejected by the bankruptcy court or not approved by such court when necessary to result in the enforceability of such agreement, or (B) rescinded by the Debtor within the time provided by the Bankruptcy Code.

B. "Attorneys General Compliance Committee" means a committee composed of the representatives of the Attorneys General of Missouri, California, Massachusetts, Tennessee, Florida, New York, and Texas.

C. "Bankruptcy Code" means the United States Bankruptcy Code, Title 11, United States Code, as amended from time to time.

D. "Consumer credit" means credit extended to a natural person primarily for personal, family or household purposes.

E. "Debtor" means any person who owes, owed or whom any Defendant contends or claims to owe, any obligation in connection with any extension of open end credit under a plan to finance the purchase of goods and services, including credit insurance, where any Defendant was or is the creditor, holder and/or servicer under such plan.

F. "Defendants" means, to the extent of their businesses within the scope of Article IV, Montgomery Ward Credit Corporation and General Electric Capital Corporation, as well as their

subsidiaries; their successors and the assigns of all or substantially all the assets of their businesses; their officers, employees, agents and independent contractors; and any person with actual knowledge of this Consent Judgment who acts in concert or participation with them.

G. "Open end credit" means consumer credit extended pursuant to a plan as to which: (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may impose a finance charge from time to time on an outstanding balance; and (iii) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

H. "Order" or "Consent Judgment" means this Consent Judgment.

I. "Reaffirmation Agreement" means a written agreement between a Defendant and a Debtor who has filed a petition under Chapter 7 of the Bankruptcy Code, the consideration for which, in whole or in part, is based on all or a portion of any prepetition debt incurred as a Debtor.

## **VI. INJUNCTION**

IT IS HEREBY ORDERED that the Defendants are permanently enjoined and restrained from engaging in any of the following:

A. Attempting to solicit or soliciting any Debtor who is the subject of a proceeding under the Bankruptcy Code to enter into a Reaffirmation Agreement without giving the Debtor or, if the Debtor is represented by counsel, the Debtor's attorney, a statement written in plain English, in at least 12-point type, containing the following information:

1. The Debtor is not required to reaffirm any debt.
2. If the Debtor reaffirms any debt, the amount of the debt reaffirmed will be subject to the same finance charge that is applied to outstanding balances

under the credit agreement, or, at the relevant Defendant's option, a lower finance charge disclosed by that Defendant.

3. If the Debtor reaffirms any debt, the Reaffirmation Agreement will be filed with the bankruptcy court. The Defendant obtaining the Reaffirmation Agreement will provide the Debtor, or, if the Debtor is represented by counsel, the Debtor's attorney, with a bankruptcy court date-stamped copy of the Reaffirmation Agreement. If the signed Reaffirmation Agreement could not be timely filed, that Defendant will return the original Reaffirmation Agreement, or, if the original was filed with the bankruptcy court, a date-stamped copy thereof, to the Debtor or, if the Debtor is represented by counsel, to his or her attorney, and the Reaffirmation Agreement will be void and of no effect.
4. The Debtor may rescind the Reaffirmation Agreement before the Debtor's discharge or within 60 days of the filing of the Reaffirmation Agreement with the bankruptcy court, whichever is later.

Notwithstanding the foregoing, if a Defendant makes such solicitation through the Debtor's attorney and not the Debtor, the Defendant making the solicitation shall provide the statement described above to the Debtor's attorney and request that such statement be given to the Debtor; provided, however, that the Defendant making the solicitation shall provide the statement described above to the Debtor: (a) if the Defendant makes such solicitation through the Debtor's attorney and copies the Debtor on the solicitation; or (b) if at any point the Defendant solicits the

Debtor directly. Nothing herein shall be construed to authorize any Defendant to contact a Debtor who is represented by an attorney if such contact is prohibited by law.

B. Making any untrue or misleading statement to any Debtor about the rights, obligations, benefits, or consequences to the Debtor of not reaffirming all or any portion of the debt that Defendants or the Debtor contends is owed or may be owed to Defendants. This provision includes untrue or misleading statements concerning the existence of a security interest, the nondischargeability of a debt to a Defendant, the customer's right to obtain a discharge, the existence of alternatives to reaffirmation, and statements concerning the valuation of goods or the value of a Defendant's security interest in any goods that are not made in good faith, *e.g.*, honesty in fact.

C. Soliciting, obtaining or enforcing any agreement from a Debtor to reaffirm a debt in violation of any provision of the Bankruptcy Code, including, without limitation, Sections 362(a)(6); 524(a)(2), (c), and (d); and 727(b) of the Bankruptcy Code.

D. Collecting or attempting to collect any debt of a Debtor (including any interest, fee, charge, or expenses incidental to the principal obligation) in violation of the Bankruptcy Code, including, without limitation, a debt that has been legally discharged in bankruptcy proceedings.

E. Failing to file all Reaffirmation Agreements obtained from Debtors pursuant to Sections 524(c) and (d) of the Bankruptcy Code with the appropriate bankruptcy court, provided that the Reaffirmation Agreement is received by the relevant Defendant not less than five (5) business days prior to the date that the Debtor's Order of Discharge is entered. This provision shall not apply if local bankruptcy rules or other applicable federal law prohibits creditors from filing Reaffirmation Agreements in a particular district.

F. In the event a Reaffirmation Agreement was not filed before discharge in accordance with Article VI.E, failing to return the original Reaffirmation Agreement, or, if the original was filed with the bankruptcy court, a court date-stamped copy thereof, to the Debtor or, if the Debtor is represented by counsel, to his or her attorney, with a cover letter stating that the Reaffirmation Agreement is void and of no effect. This provision shall not apply if the Defendants do not have the original Reaffirmation Agreement because local bankruptcy rules or other applicable federal law prohibits creditors from filing Reaffirmation Agreements in a particular district and the original Reaffirmation Agreement was given either to the Debtor or the Debtor's attorney for filing with the bankruptcy court.

G. Failing to mail, as provided herein, a bankruptcy court date-stamped copy of the Reaffirmation Agreement and a notice, which may be in the form of a cover letter, printed in at least 12-point type, which shall contain the following disclosures, which shall be grouped together and set forth in a clear and conspicuous manner:

1. that the Debtor's agreement to reaffirm a debt to the relevant Defendant in an amount which that Defendant shall disclose in the notice has been filed with the bankruptcy court and that the Debtor will owe this amount to that Defendant after the bankruptcy case is over unless the Debtor cancels the Reaffirmation Agreement;
2. that the Debtor was not required to reaffirm his or her debt and has the legal right to cancel the Reaffirmation Agreement;
3. that the Debtor may cancel the Reaffirmation Agreement by a specified date which that Defendant shall disclose in the notice that is (i) the date 60 days

after filing of the Reaffirmation Agreement or (ii) the date the bankruptcy court enters an Order of Discharge, whichever happens later;

4. that the Debtor may cancel his or her Reaffirmation Agreement by telephoning a cancellation to a toll-free telephone number shown on the cover letter or by sending a written cancellation to that Defendant at the address shown on the cover letter;
5. that no specific form is required to cancel the Reaffirmation Agreement.

The Defendant obtaining the Reaffirmation Agreement shall mail the bankruptcy court date-stamped Reaffirmation Agreement and the notice required by this paragraph by first-class mail, postage prepaid, to the *pro se* Debtor or, if the Debtor is represented by counsel, to the Debtor's attorney (and to the Debtor if the Debtor was copied on the solicitation letter specified in subsection A of this Article VI or if the Debtor was solicited directly by any Defendant at any point to enter into a Reaffirmation Agreement), (i) within ten business days of that Defendant receiving the date-stamped copy of the Reaffirmation Agreement directly from the bankruptcy court (or, in the case of a *pro se* Debtor, within ten business days after that Defendant receives notice of the bankruptcy court's approval of the *pro se* Debtor's Reaffirmation Agreement), or (ii) if the Reaffirmation Agreement is filed by the Debtor's attorney and obtained by that Defendant, within ten business days after that Defendant obtains a bankruptcy court date-stamped copy of the Reaffirmation Agreement.

H. Representing or implying that nonpayment of any debt of a Debtor will result in, or threatening to take or taking any action to effect, the seizure, garnishment, attachment, retaking or

sale of any property or wages of any person, unless the Defendant doing so intends to take that action and the action is not prohibited by law.

I. Using a security interest with respect to the debt of a Debtor for the purpose of intimidation. For the purpose of this paragraph, "intimidation" does not include (i) a statement by a Defendant that it intends to take judicial action to seek to recover property if that Defendant intends to take that action and the action is not prohibited by law, (ii) the filing of secured claims in bankruptcy proceedings, or (iii) setting forth in written communications to Debtors or attorneys for Debtors that the Defendant claims a security interest in identified goods and requests a statement of intention pursuant to Section 521 of the Bankruptcy Code.

J. Reporting any adverse information to credit reporting agencies or failing to request credit reporting agencies to remove any such adverse information previously reported to a credit reporting agency, concerning (i) any relief granted under this Consent Judgment including payments to Affected Consumers, and the negation of Reaffirmation Agreements obtained contrary to law and (ii) the failure of a Debtor to perform under any agreement to reaffirm debt obtained contrary to law.

K. Ending a credit relationship with a Debtor based in whole or in part on a Defendant's relinquishment of its claims to reaffirmed debt, the payments to Affected Consumers, or other actions related to the Debtor that the Defendant is obliged to take under this Consent Judgment.

## VII. PAYMENTS TO AFFECTED CONSUMERS

A. Defendants shall exercise their reasonable best efforts to identify Affected Consumers. For each Affected Consumer, and as may be further specified in Article VII. B, C and D, Defendants, as equitable relief, shall:

1. Relinquish any claim to any unpaid portion of the reaffirmed debt and to any unpaid finance charges, late charges and credit insurance charges assessed in connection with the reaffirmed debt and adjust the Affected Consumer's account balance to reflect the relinquishment of the claim.
2. Except as provided in Article VII.B, make payment to the Affected Consumer by check for all money paid on account of the reaffirmed debt and all money paid in finance charges, late charges and credit insurance charges in connection with the reaffirmed debt (the "Principal Amount").
3. Except as provided in Article VII.B, make payment to the Affected Consumer for the lost time-value of the money paid by paying the Affected Consumer for the full period for which Defendants held that money interest at the rate of 9.1% per annum (reflecting a blending of the prejudgment rates of interest of various states identified by the Defendants and the Attorneys General Compliance Committee in which Affected Consumers reside) (the "Interest Amount"). The Interest Amount and the Principal Amount shall be referred to collectively as the "Payment Amount."
4. Waive any security interest which Defendants claimed in merchandise purchased by such Affected Consumer prior to the date he or she filed a

petition for relief under the Bankruptcy Code ("pre-bankruptcy merchandise") and not seek to recover any such pre-bankruptcy merchandise.

5. Notwithstanding anything otherwise provided herein, with respect to joint accounts Defendants shall not be obligated to make payment to more than one Debtor named on such account.
- B. 1. To the extent that some *pro se* Affected Consumers, who made post-petition charges on an open-end credit account of a Defendant, received in whole or in part credits for the Principal Amount and interest which credits were offset by charges incurred after the filing of a bankruptcy petition, rather than receiving a cash payment of the Principal Amount and interest:
- a. Such *pro se* Affected Consumers shall have the right to choose whether to retain that account credit or receive a cash payment of such amount in lieu of the account credit. Not later than a billing cycle beginning on or before November 2, 1998, the Settlement Administrator will notify or cause to be notified each such *pro se* Affected Consumer of the right to elect cash payment in lieu of the account credit by mailing a notice and a simple postage prepaid, pre-addressed postcard by which the *pro se* Affected Consumer can communicate his or her choice (the "Pro Se Election").
  - b. The notice shall clearly and conspicuously state that if the Affected Consumer chooses cash payment for the Payment Amount, the

Affected Consumer's postpetition balance to a Defendant will be reinstated to the extent previously set off, the reinstated amount will be subject, on a going-forward basis, to finance charges in accordance with the terms of the Affected Consumer's credit account, and the Affected Consumer will be obligated to repay the reinstated amount plus finance charges as provided in the credit agreement. The form of notice and postcard shall be subject to the approval of the Defendants and the Attorneys General Compliance Committee, which approval shall not be unreasonably withheld.

- c. Such *pro se* Affected Consumers shall have 30 days from the date of mailing the notice to return the election to the Settlement Administrator. If, but only if, such a *pro se* Affected Consumer notifies the Settlement Administrator of his or her desire to receive such a cash payment, Defendants will issue or cause to be issued a check within 30 days of receiving notification from the Settlement Administrator of the request. The Settlement Administrator shall transmit to Defendants at one time a list of Affected Consumers who have made such election.
- d. Each *pro se* Affected Consumer shall have payment made to him or her by check for the balance of the amount to which the *pro se* Affected Consumer is entitled under Articles VII.A.3 and VII.B.2.

2. Each *pro se* Affected Consumer who made payments with respect to a Reaffirmation Agreement shall be paid an amount for the lost time-value of money in addition to any interest that Defendants credited to the Affected Consumer's account. For the purpose of administrative simplicity, the Defendants may pay an Affected Consumer an average amount based on the year in which the Affected Consumer executed a Reaffirmation Agreement, provided the total amount paid to all Affected Consumers substantially approximates the aggregate amount of interest that would have been paid to all Affected Consumers if separate interest calculations had been made for each Affected Consumer. Such averaged amounts shall be paid as follows:

\$174 for Reaffirmation Agreements executed in 1993; \$135 for Reaffirmation Agreements executed in 1994; \$94 for Reaffirmation Agreements executed in 1995; \$64 for Reaffirmation Agreements executed in 1996; and \$47 for Reaffirmation Agreements executed in 1997.

C. Defendants shall provide all relief consistent with Article VII.A to each *pro se* Debtor identified by Defendants who entered into a Reaffirmation Agreement with a Defendant during the period from January 1, 1993 to June 30, 1997 that was filed with the bankruptcy court as if such Debtor were an Affected Consumer.

D. In the event that a Defendant's records indicate a Debtor was represented by an attorney in connection with a petition for relief under Chapter 7 of the Bankruptcy Code, or Defendants are unable to determine under what chapter such person's petition for relief was filed, and the Defendant has an indication that a Reaffirmation Agreement may have been executed but,

notwithstanding its reasonable best efforts, Defendant is unable to determine from information in its possession, custody or control both that: (i) a Reaffirmation Agreement existed and (ii) an Affected Consumer's Reaffirmation Agreement was either filed or not filed, such an Affected Consumer will be classified by Defendants as a represented unknown consumer (the "Attorney Represented Unknowns"). The Attorney Represented Unknowns shall be treated as follows: the Settlement Administrator shall send or cause to be sent to each such consumer by first-class mail, postage prepaid, the letter and questionnaire attached hereto as Exhibits A and B (collectively referred to herein as the "Questionnaire"). Defendants and the Settlement Administrator shall adhere to the guidelines to which the Defendants and the Attorneys General Compliance Committee agree ("Guidelines")

1. For each Questionnaire timely received, the Settlement Administrator shall determine which Attorney Represented Unknowns shall be considered Affected Consumers. In making such determination, the Settlement Administrator shall consider all information (a) presented in response to the Questionnaire and Notice of Deficiency, (b) presented by Defendants with respect to one or more Attorney Represented Unknowns, and (c) discovered by the Settlement Administrator after conducting further investigation as required under the Guidelines or as the Settlement Administrator may deem appropriate in its discretion under the circumstances.
2. For each person whom the Settlement Administrator determines is an Affected Consumer, Defendants shall pay or cause to be paid the Payment Amount, as calculated in Article VII.A. For each person whom the

Settlement Administrator determines is not an Affected Consumer or who does not timely submit a signed Questionnaire, the Settlement Administrator's inquiry shall end and Defendants shall have no obligation to make payment to that person pursuant to this Consent Judgment.

3. For each person who timely submits a signed Questionnaire but who does not provide sufficient information and documentation to enable the Settlement Administrator, without undue burden and expense, to ascertain whether or not the consumer is an Affected Consumer, there shall be a Notice of Deficiency sent to such person to allow him or her the opportunity to prove that he or she executed a Reaffirmation Agreement that was unfiled and he or she is entitled to payment pursuant to this Consent Judgment.
4. After reviewing the responses to the Questionnaire and any Notice of Deficiency, and after conducting any appropriate investigation, the Settlement Administrator shall make a determination as to each Attorney Represented Unknown's eligibility for the relief described in Article VII.A.
  - a. If, taking into account the totality of information available to the Settlement Administrator, the claim meets the Guidelines, the consumer shall receive the relief described in Article VII.A.
  - b. The Settlement Administrator shall deny a claim if the best information reasonably available to the Settlement Administrator demonstrates any of the following: that the consumer did not file for bankruptcy, that no Reaffirmation Agreement was signed, that

the Reaffirmation Agreement was filed with the bankruptcy court, or that the consumer did not receive a discharge.

c. Any claim that remains unresolved will be denied.

d. The Settlement Administrator shall notify a consumer of the rejection of his or her claim, briefly describe the reason for rejecting the claim, and describe the procedure for objecting to the Settlement Administrator's determination, as set forth in this subparagraph. If a consumer is dissatisfied with the Settlement Administrator's determination of the claim, the consumer may provide the Settlement Administrator with a written objection, including the reasons therefor, within 30 days after the Settlement Administrator mails notice to the consumer of the Settlement Administrator's determination. If a consumer fails to submit a timely written objection as provided herein, the Settlement Administrator's determination regarding that consumer shall be deemed final and not subject to further appeal. If a timely written objection is submitted, the Settlement Administrator shall present that objection, along with all of the written objections received from consumers, to the Defendants and the Attorneys General Compliance Committee within 15 days after the Settlement Administrator has concluded making payments to Affected Consumers. The Defendants and the Attorneys General Compliance Committee shall confer on such

objections. If the Defendants and the Attorneys General Compliance Committee are able to reach an agreement upholding a consumer's claim, the Defendants shall pay the claim. If the Defendants and the Attorneys General Compliance Committee are able to reach agreement denying a consumer's claim, the claim shall be denied. If the Defendants and the Attorneys General Compliance Committee are unable to reach an agreement regarding a consumer's claim, the following procedure shall be employed at the Defendants' expense to resolve each such disputed consumer's claim: (i) the Defendants and the Attorneys General Compliance Committee shall select a retired judge mutually agreeable to them to render a final, non-appealable decision on each disputed consumer claim ("Claims Appeal Judge"), (ii) the Settlement Administrator shall submit each such consumer claim and all relevant documents to the Claims Appeal Judge, (iii) each consumer, the Defendants, and the Attorneys General Compliance Committee shall be given reasonable notice and a reasonable opportunity to participate simultaneously in a telephone conference with the Claims Appeal Judge to discuss the claim, (iv) the Claims Appeal Judge shall render a final, non-appealable decision based on the written objections, relevant documents, and the presentations made during the telephone conference, and (v) the Defendants shall pay the claim to the extent

ordered by the Claims Appeal Judge and, to the extent that the claim is not fully paid, the Settlement Administrator shall inform the consumer in writing of the Claims Appeal Judge's final decision.

5. The Settlement Administrator shall respond to any questions of Debtors regarding this Consent Judgment, the Questionnaire or Notice of Deficiency and, in connection therewith, shall establish a toll free number.

E. Defendants and the Attorneys General Compliance Committee jointly shall select, and Defendants shall retain, a Settlement Administrator to review Defendants' compliance with Article VII and to administer parts thereof. The Settlement Administrator shall be an independent firm containing one or more certified public accountants that is substantially experienced in the administration of consumer payment programs.

1. The Settlement Administrator shall determine whether Defendants have reasonably examined records, reasonably identified Affected Consumers, correctly calculated payment amounts (including the Interest Amounts described in Article VII.A), actually issued payments or credits to Affected Consumers, paid undeliverable checks as provided in Article VII.G, and undertaken the steps represented by Defendants in their Written Summary, (as described in Article VII.I).
2. The Settlement Administrator shall be responsible for all aspects of administering this Article VII, including but not limited to, communicating with Affected Consumers, evaluating returned Questionnaires and Notices of Deficiency and reporting to the Attorneys General Compliance

Committee, except that Defendants shall be responsible for issuing all checks. The specific tasks to be undertaken by the Settlement Administrator in connection with administering this Consent Judgment shall be set forth more fully herein and in an agreement to be entered into by the Defendants and the Settlement Administrator, subject to the approval of the Attorneys General Compliance Committee.

3. The procedures to be employed by the Settlement Administrator to determine compliance and payment shall be developed by the Settlement Administrator in accordance with applicable standards established by the American Institute of Certified Public Accountants and shall include testing and such other procedures sufficient to enable the Settlement Administrator to render an opinion concerning the Defendants' assertion of compliance with this judgment as set forth in the Defendants' Written Summary, as described in Article VII.I.
4. The letter of engagement shall also specify that the Settlement Administrator shall provide Defendants and the Attorneys General Compliance Committee with a final report no later than May 31, 2000, unless the Defendants and Attorneys General Compliance Committee agree to a later date, which agreement shall not be unreasonably withheld if additional time is needed to prepare an appropriate report. The final report shall be issued promptly upon completion of all action required hereunder. The letter of engagement shall prescribe that the final report shall (a)

summarize all tasks undertaken by the Settlement Administrator, (b) set forth the Settlement Administrator's opinion that Defendants have complied with Article VII.A and the other payment provisions in Article VII of this Consent Judgment except to the extent that the Settlement Administrator specifically describes any deficiencies in compliance, and (c) set forth the Settlement Administrator's certification of its compliance with the procedures set forth in this Consent Judgment except to the extent of any specifically described deficiencies in compliance. The letter of engagement shall acknowledge that each Attorney General stipulating to the entry of judgment in substantially this form is an intended user or beneficiary of the report.

5. The letter of engagement shall provide that the Settlement Administrator shall make available to Defendants and the Attorneys General Compliance Committee, within 30 days of written request, copies of all records, documents, reports and work papers obtained or prepared in connection with the duties set forth herein and shall also make available to Defendants and the Attorneys General Compliance Committee a person or persons familiar with the procedures to be performed as required by this Consent Judgment or provided in the letter of engagement. If Defendants have already produced documents responsive to the request, the Settlement Administrator may identify those documents in lieu of providing duplicates.

6. Defendants' total expense in connection with the retention of the Settlement Administrator shall not exceed one million five hundred thousand dollars (\$1,500,000). The Settlement Administrator's total charge, including costs and expenses, may exceed \$1,500,000 only if (a) the Attorneys General Compliance Committee requests that Defendants direct the Settlement Administrator to perform any service, in connection with the Settlement Administrator's functions under this Consent Judgment, that would increase the Settlement Administrator's charge, including costs and expenses, beyond \$1,500,000 and (b) the total amount of the excess over \$1,500,000 is (i) specified in writing and (ii) does not exceed the amount of the reserve held by the Missouri State Attorney General as described in Article VIII.A.3. The only obligation that may be created herein or in the engagement agreement with the Settlement Administrator regarding any liability for any payment to the Settlement Administrator in excess of \$1,500,000 for any service requested by the Attorneys General Compliance Committee relates exclusively to the reserve described in Article VIII.A.3, and nothing herein or in the engagement agreement with the Settlement Administrator shall be construed to create any liability under any theory of law or equity against any Attorney General, or any state or agency thereof. Nothing herein or in the engagement agreement with the Settlement Administrator shall be construed to create any liability under any theory of law or equity against any Defendant for any amount in excess of

\$1,500,000 for the retention of the Settlement Administrator as described herein.

F. To facilitate the Settlement Administrator's responsibilities, Defendants shall make available, at Defendants' expense, to the Settlement Administrator sufficient documents, persons, and other information, including data bases, to enable the Settlement Administrator to fulfill its functions under this Consent Judgment, including documents, access to persons, and information reasonably related to (a) the determination of whether a person is an Affected Consumer, (b) the calculation of payments and paying or crediting the accounts of Affected Consumers as required under this Consent Judgment, and (c) the Settlement Administrator's review of Defendants' compliance with the requirements that Defendants identify Affected Consumers and make payments to them as provided in this Consent Judgment.

G. If any check sent to an Affected Consumer is returned undeliverable, the Settlement Administrator shall take or cause to be taken reasonable steps, including skip-tracing if reasonable, to attempt to locate the Affected Consumer. If thereafter the Affected Consumer is still not located (or an Affected Consumer's check is not cashed within six months), any funds payable under Articles VII.A through VII.D hereof but not deliverable shall, pursuant to this Consent Judgment, be promptly, but in no event later than May 1, 2000, paid to the Attorney General of the state of the last known address of such Affected Consumer if such Attorney General has entered into a Consent Judgment. Any money distributed to the State of Kansas pursuant to this Article will be reported and remitted to the State Treasurer of Kansas in accordance with the Kansas Uniform Unclaimed Property Act, K.S.A. §58-3934 *et seq.*

- H. 1. On or before May 31, 2000, Defendants and the Settlement Administrator shall provide, to the extent applicable to each, to the Office of the Kansas Attorney General, Consumer Protection Division, 301 S.W. 10<sup>th</sup> Avenue, Topeka, KS 66612-1597, Attention: C. Steven Rarrick, a Final Certification Report containing the following information:
- a. A certification by Defendants that all monetary relief provided for herein due to all eligible Affected Consumers in Kansas has been paid. The report shall also certify compliance by Defendants and the Settlement Administrator with each provision of this Consent Judgment related to such monetary relief to the extent applicable to each.
  - b. An alphabetical list of the name and address of every Affected Consumer, as defined herein, residing in Kansas, together with the total amount of relief as specified in Article VII.A.1, A.2 and A.3, herein for such Affected Consumer and that Defendants waive any security interest to the extent provided in Article VII.A.4 with respect to such Affected Consumers.
2. Defendants and the Settlement Administrator shall provide for review by the Kansas Attorney General, Consumer Protection Division, within 30 days of a written request, all records, documents and personnel reasonably necessary to ascertain Defendants' and the Settlement Administrator's compliance with the monetary provisions of this Consent Judgment as to

Affected Consumers in the State of Kansas (for example, in response to inquiries concerning specific Affected Consumers in Kansas).

3. Nothing in this Article shall limit the Attorney General's right to request or obtain information from Defendants as otherwise provided in this Consent Judgment or as provided by law.
4. The Settlement Administrator shall also provide to each member of the Attorneys General Compliance Committee, one copy of each report provided to the State's Attorney General described in Article VII.H.1 herein. Until May 1, 2001 Defendants and the Settlement Administrator shall provide for review by the Attorneys General Compliance Committee, within 30 days of written request, sufficient records, documents, persons, and other information reasonably necessary to ascertain Defendants' compliance with the monetary provisions of this Judgment.

I. Defendants, not later than February 1, 1999, shall provide to the Attorneys General Compliance Committee, a written summary (the "Written Summary") describing the process Defendants used (a) to identify Affected Consumers as required by Article VII.A herein and to locate records of people filing responses to Questionnaires as described by Article VII.D and F herein; (b) to calculate the amounts owed to Affected Consumers; and (c) to credit, or actually pay those amounts, as the case may be, to Affected Consumers.

J. All payments by Defendants to Affected Consumers provided for by Articles VII.A through VII.D herein shall be made not later than September 30, 1999. This obligation and Defendants' monetary obligations hereunder shall not apply as to any person who does not

relinquish, by executing a waiver and release of all claims that the person may have against Defendants based on Defendants' obtaining or collecting upon a Reaffirmation Agreement from that person in violation of law in substantially the following form:

I waive and release the claims I may have against Montgomery Ward Credit Corporation and/or GE Capital Corporation, their employees, agents and affiliates based on their soliciting, obtaining or collecting upon a Reaffirmation Agreement I entered into with them.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name

The waiver shall be printed clearly and conspicuously on the back of the payment check above the place for the payee's endorsement and shall indicate that endorsement or encashment of the check constitutes such waiver. The language of the waiver may be modified by the agreement of the Defendants and the Attorney General to the extent necessary to effect a release or the settlement of a claim as provided under the state's version of Section 3-311 of the Uniform Commercial Code or other applicable state law.

K. For purposes of Article VII, "Affected Consumer" includes only Debtors whose credit accounts are owned by a Defendant on the date hereof or were owned at any time between April 15, 1997 and the date hereof.

#### **VIII. PAYMENT TO STATES**

A. Defendants will pay twenty-four million five hundred thousand dollars (\$24,500,000) in the aggregate, inclusive of all reserves, and other obligations set forth in Article VIII to the States Attorneys General, via an electronic bank transfer payable to the Missouri State Office of the Attorney General within one (1) business day of notice of entry of this Consent

Judgment. Except as provided in Article VIII.A.2, the Missouri State Attorney General agrees to hold these monies, in an interest-bearing trust account, for distribution among all States that exercise their choice to participate in the fund by executing a Consent Decree with Defendants in substantially the same form as this one on or before August 4, 1998. This money, including interest accrued, will be distributed to participating States proportionately based upon the relationship that the number of Affected Consumers in each State identified as of April 1, 1998 pursuant to Article VII herein bears to the total number of Affected Consumers in all participating States (for each State, its "Proportionate State Share"). Except for those funds held in reserve pursuant to Article VIII.A.3, the money, including interest accrued, will be distributed to the participating States on or before September 1998 to be used for consumer education and consumer protection purposes.

1. The Proportionate State Share for Kansas of the twenty-four million five hundred thousand dollars (\$24,500,000) paid pursuant to this Article shall be distributed and paid toward investigative fees, costs and other consumer protection purposes pursuant to K.S.A. §50-632.
2. To the extent that any State does not enter a Consent Judgment with Defendants on or before August 4, 1998, unless that date is extended in writing by Defendants, the Missouri Attorney General will return to Defendants the Proportionate State Share (at the time distribution to the participating States is made) for each such State that does not participate. However, this requirement shall not apply where: (i) Defendants have failed or refused to execute a Consent Judgment in substantially the same

form as this Consent Judgment; or (ii) where a State and Defendants have filed in State Court a Consent Judgment but such Consent Judgment has not yet been approved by the Court.

3. Of the funds held as described in VIII.A, the Missouri State Attorney General shall hold one million dollars (\$1,000,000) in reserve in an interest-bearing trust account. These funds held in reserve shall be used to pay for services rendered by the Settlement Administrator under Article VII.E if, at the sole discretion of the Attorneys General Compliance Committee, the Attorneys General Compliance Committee directs Defendants to instruct the Settlement Administrator to perform services in connection with the Settlement Administrator's duties under this Consent Judgment, but beyond the one million five hundred thousand dollars (\$1,500,000) to be paid by Defendants. Funds held in reserve pursuant to this Article VIII.A.3 that are not expended for the Settlement Administrator shall be paid to the states as provided in Article VIII.A, except that distribution to the states of any funds not expended for the Settlement Administrator shall not be made prior to receipt of the final bill from the Settlement Administrator.

#### **IX. CONSUMER EDUCATION FUND**

- A. Defendants will pay within one (1) business day of notice of entry of this Consent Judgment three million dollars (\$3,000,000) to the States Attorneys General via wire transfer, certified or cashier's check made payable to the Massachusetts Attorney General's office, which shall be held and exclusively used as provided in the Consent Judgment entered in *Commonwealth*

of *Massachusetts v. Sears, Roebuck and Co*, Suffolk County Superior Court No. 97-4139-A, and pursuant to the November 14, 1997, Order of the Massachusetts Superior Court captioned "Order Governing the \$5 Million Fund for Consumer Protection and Education Established Pursuant to the Consent Judgment."

B. Of the sum specified in this Article IX.A, one million dollars is paid to the Attorneys General as a *cy pres* payment with respect to Debtors who were solicited to enter into Reaffirmation Agreements with Defendants during the period from January 1, 1990 to December 31, 1992. This *cy pres* payment is being paid because of the impracticability of identifying this category of Debtors, which has resulted from a lack of records regarding these Debtors, the consequent difficulty and excessive cost of identifying the Debtors, even by using a claims process, and the likely difficulty of establishing valid claims with a reasonable degree of reliability. This *cy pres* payment will be used for consumer education and consumer protection purposes.

C. Of the sum specified in this Article IX.A one million dollars is paid to the States Attorneys General as a *cy pres* payment with respect to those Debtors who were not represented by an attorney or who were represented by an attorney, but notwithstanding such representation, were allegedly subject to improper Reaffirmation Agreement solicitation practices or allegedly improper debt collection practices. This *cy pres* payment is being paid because of the impracticability of identifying this category of Debtors, which has resulted from a lack of records regarding these Debtors, the consequent difficulty and excessive cost of identifying the Debtors, even by using a claims process, and the likely difficulty of establishing valid claims with a reasonable degree of reliability. This *cy pres* payment will be used for consumer education and consumer protection purposes.

## **X. SETTLEMENT OF CLAIMS**

This Consent Judgement resolves the above-captioned action and the Kansas Attorney General will not bring any other action against any Defendant and/or its clients, based on the facts alleged in Plaintiff's Petition For Approval of Consent Judgment,

## **XI. TERMS OF PAYMENT**

A. The payments and actions required in Article VII and VIII of this Consent Judgment will also be required by Consent Judgments or Settlement Agreements entered by Defendants in other courts. Defendants are required to make those payments or take those actions only once, despite the existence of multiple judgments or agreements requiring that the payments be made and actions be taken.

## **XII. REPRESENTATIONS AND WARRANTIES**

A. Except as otherwise provided in Article XII.D herein, the acceptance of this Order by the Attorneys General shall not be deemed approval by them of any of Defendants' advertising or business practices.

B. Except as otherwise provided in Article XII.D herein, Defendants shall not represent or imply that any procedure or other act or practice hereafter used or engaged in by Defendants has been approved, in whole or in part, by the Attorneys General.

C. Except as otherwise provided in Article XII.D herein, neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that any state agency or officer has approved, sanctioned or authorized any practice, act or conduct of the Defendants.

D. Nothing in Article XII.A, B, or C shall prohibit Defendants from stating to persons that Defendants have entered into a settlement with Attorneys General resolving the allegations contained in the Attorney General's Petition For Approval of Consent Judgment, from stating that any specific action is required by this Order, if such is the case, from stating that the Order was entered with the consent of the Attorney General and Defendants, or from providing copies of this Order to any person upon request.

E. Defendants represent and warrant that the execution and delivery of this Order is its free and voluntary act and that this Order is the result of good faith settlement negotiations. The parties warrant that they will implement the terms of this Order in good faith.

F. Defendants shall not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Consent Judgment or intentionally circumventing any part of this Consent Judgment or the spirit or purposes of this Consent Judgment.

G. The parties represent that signatories to this Order have authority to act for and bind them.

H. The titles and headings of each section of this Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Order. The use of the singular shall include the plural, as appropriate, and vice versa.

I. This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

J. This Order is meant to resolve all and only those matters set forth in the allegations contained in the Attorney General's Petition For Approval of Consent Judgment.

K. Except as otherwise provided herein, nothing in this Order shall be construed to limit the authority of any Attorney General to (1) protect the interests of his or her State or the people of his or her State or (2) bar any State or other governmental entity from enforcing laws, regulations or rules against the Defendants.

L. Nothing in this Order shall prohibit a Defendant from accepting voluntary repayment of a debt pursuant to Section 524(f) of the Bankruptcy Code or any amendment thereto or successor provision of the Bankruptcy Code.

M. Nothing in this Order shall prohibit a Defendant from offering additional credit to a Debtor who enters into a Reaffirmation Agreement or from billing or collecting from persons who are Attorney Represented Unknowns who are not determined to be Affected Consumers.

N. This Order shall be binding and effective when entered by the Court.

O. For a period of five (5) years from the date this Order becomes effective, Defendants shall provide a copy of the injunctive provisions of this Consent Judgment to all current and future officers, agents, servants, employees and attorneys having responsibilities for the recovery of debt from Defendants' customers who have filed proceedings under Chapter 7 of the Bankruptcy Code ("Covered Persons"), and shall obtain from the person or entity receiving a copy of the injunctive provisions a signed and dated acknowledgment indicating the person's or entity's name and the fact that the person or entity has received and read a copy of the injunctive provisions. If Defendants retain a debt collection agency or law firm to perform the functions of Covered Persons through that entity's officers, partners, employees, or agents, Defendants shall deliver a copy of this order to each such debt collection agency or law firm and instruct the debt collection agency or law firm to provide a copy of the injunctive provisions to all of its officers,

employees, and agents having responsibilities for collecting debt from Defendant's customers who have filed bankruptcy proceedings and for soliciting and obtaining reaffirmation agreements. The debt collection agency or law firm shall obtain, from the persons receiving a copy of the injunctive provisions, a signed and dated acknowledgment indicating the person's name and the fact that the person has received and read a copy of the injunctive provisions. Defendants shall obtain from the debt collection agency or law firm a verification that the debt collection agency or law firm has, in fact, provided copies of the injunctive provisions and obtained the signed and dated acknowledgments as provided in this Order. Defendants and each debt collection agency or law firm shall maintain each original signed acknowledgment for five (5) years. Defendants shall provide the copy of the injunctive provisions and obtain the required signed acknowledgment within thirty (30) days of the entry of this Consent Judgment as to current Covered Persons and before any new Covered Person makes contact with a Defendant's customer or the Defendant's customer's attorney for the recovery of debt from Defendants' customers who have filed proceedings under Chapter 7 of the Bankruptcy Code. The Defendants shall provide the Attorneys General Compliance Committee with copies of the acknowledgments within a reasonable time of receiving a written request.

P. Following the expiration of the requirements of Article XII.O, Defendants shall provide written materials reflecting the substantive content of the injunctive provisions of this Consent Judgment to all future Covered Persons not previously subject to Article XII.O before any such Covered Person makes any contact with a Defendant's customer or a Defendant's customer's attorney for the purpose of recovering debt from Defendants' customers, including customers who

have filed bankruptcy proceedings, enforcing any security interest, or soliciting or obtaining Reaffirmation Agreements.

Q. Nothing in this Order shall limit any Attorney General's right to obtain information, documents or testimony from the Defendants pursuant to any state or federal law, regulation or rule. Nor shall anything in this Order limit Defendants' right to resist any such request by any Attorney General.

R. This Order shall be construed to allow Defendants to send periodic statements and accept payments from Debtors who act to continue to remain current under their credit obligation consistent with such judicial authority as *In re Boodrow*, 126 F.3d 43 (2d Cir. 1997), *cert denied*, 118 S.Ct. 1055 (1998); *In re Parker*, 139 F.3d 668 (9th Cir. 1998); *Lowry Federal Credit Union v. West*, 882 F.2d 1543 (10th Cir. 1989); *In re Belanger*, 962 F.2d 345 (4th Cir. 1992).

### **XIII. MONITORING FOR COMPLIANCE**

A. Subject to any properly asserted attorney-client privilege, attorney work product claims, and applicable court orders of a state court having jurisdiction of the subject matter, Defendants shall make available to the Attorney General, at Defendants' expense, within 30 days of the Attorney General's written request or such longer time as may be agreed, copies of all requested documents relating to Defendants' compliance with this judgment. In the event Defendant needs additional time to comply with the document request and cannot agree with the Attorney General on the additional time period, Defendants may apply to the Court for additional time.

#### **XIV. ENFORCEMENT**

A. The Attorney General agrees not to initiate any proceeding for contempt for a violation of any of the injunctive provisions of this judgment without first (1) contacting Defendants' general counsel at 260 Long Ridge Road, Stamford, Connecticut 06927-9100 and President, Defendants' Retailer Business, 1600 Summer Street, Stamford, Connecticut 06927-9100 or at such other addresses as may be designated by Defendants, (2) describing the nature of the alleged violation, (3) allowing Defendants a period of thirty (30) days, or such additional time as may be agreed, (a) to provide a written response to the allegations and, if requested by Defendants, to meet with the Attorney General, and (b) if requested by the Defendants and agreed to by the Attorney General, the Attorneys General Compliance Committee to discuss the alleged violations and alternatives to the initiation of contempt proceedings based on all of the circumstances.

B. The Plaintiffs will not bring a contempt action against any natural person unless that person participates in, knowingly assists, or knowingly aids and abets a violation of the injunctive provisions.

#### **XV. COMPLIANCE WITH ALL LAWS**

A. Nothing in this Order shall be construed as relieving Defendants of the obligation to comply, or prohibit Defendants from complying, with all applicable state and federal laws, regulations (including the regulatory authority's official published interpretation thereof, such as the Official Staff Commentary to Federal Reserve Board Regulation Z) or rules (including any general or local bankruptcy court rule), nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

## **XVI. NO ADMISSION**

A. This Consent Judgment and all negotiations, statements and proceedings in connection therewith shall not in any event be construed as, or deemed to be evidence of, an admission or concession on the part of the Defendants of any liability of or wrongdoing by them, and shall not be offered or received in evidence in any action or proceeding as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of the Defendants, or used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of the Defendants, and shall not be construed as, or deemed to be evidence of an admission or concession that any Affected Consumer suffered any damage. This Consent Judgment does not constitute an adjudication as to the substantive merits of any claim or defense in this case.

## **XVII. RETENTION OF JURISDICTION**

A. This Court shall retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the modification (including vacation) of the injunctive provisions herein, interpretation or enforcement of any of the provisions of this Consent Judgment. The injunctive provisions may be modified based on changed circumstances justifying modification, including, without limitation, (1) changes in applicable statutes, regulations (including the regulatory authority's official published interpretation thereof), rules (including any general or local bankruptcy court rule) or order of a court; and (2) appellate court decisions establishing binding precedent.

B. In the event Defendants believe that a modification, including termination of this Consent Judgment, is necessary or appropriate, they shall give notice to the Attorneys General Compliance Committee thirty (30) days prior to seeking such modification. The notice shall identify the relief proposed, explain why Defendants believe the relief proposed is necessary or appropriate and, if the relief sought is a modification, state how the proposed modification would be implemented.

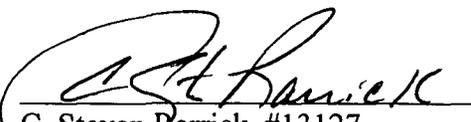
### XVIII. PAYMENT OF COURT COSTS

A. All court costs associated with this action shall be borne by Defendants. Except as otherwise provided herein, each party shall bear its own costs, including attorneys' fees.

Dated: August 7, 1998

JOINTLY APPROVED AND  
SUBMITTED FOR ENTRY:

  
\_\_\_\_\_  
Carla J. Stovall, #11433  
Attorney General

  
\_\_\_\_\_  
C. Steven Rarrick, #13127  
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Name  
Attorney in Fact For  
Deborah S. Gallagher  
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GENERAL ELECTRIC CAPITAL CORPORATION

By: Edward D. Stewart  
Name  
Attorney in Fact For  
Edward D. Stewart  
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