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3RD JUDICIAL DISTRICT

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TOPEKA, KANSAS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 4

STATE OF KANSAS, *ex rel.*,)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.)
)
DIRECT AMERICAN MARKETERS, INC., and)
ANTHONY C. BROWN, Individually,)
)
Defendants.)

Case No. 99CS9

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

JOURNAL ENTRY OF CONSENT JUDGMENT

1. Plaintiff, the State of Kansas, by its Attorney General, Carla J. Stovall, has filed a Petition against Defendants, Direct American Marketers, Inc., ("DAMI") and Anthony C. Brown ("Brown") (hereafter referred to collectively as "Defendants"). The Petition seeks equitable and other relief allowed by law. In its Petition, Plaintiff alleges, among other things, that DAMI engaged in deceptive and unconscionable business practices in violation of the Kansas Consumer Protection Act (KCPA), K.S.A. 50-623, *et seq.*, in the sale of "pay per call" services by DAMI through the use of sweepstakes and other prize promotions that DAMI mailed to consumers on or before August 31, 1997 (the "Sweepstakes"). As used herein, the Sweepstakes shall include only those pay per call services offered by DAMI through Sweepstakes and other prize promotions prior to August 31,

1997. For example, the Sweepstakes does not include other pay per call services offered by DAMI such as psychic services, dating services, pet services or other club programs.

2. DAMI is a California corporation with its principal office or place of business at 16881 Hale Avenue, Irvine, California 92606.

3. Brown is and, at all relevant times hereto, was President and Chief Executive Officer of DAMI and is and, at all relevant times hereto, was a California resident.

4. The Petition alleges that Brown, in his capacity as President and Chief Executive Officer of DAMI, was aware of and was responsible for controlling and directing the activities of DAMI.

5. On August 22, 1997, DAMI filed a petition for relief under Chapter 11 of the United States Code in the United States Bankruptcy Court for the Central District of California (the "Bankruptcy Court"), Case No. SA 97-23498 JW (Chapter 11) ("the Bankruptcy"). The case number was subsequently changed to LA 98-19770-JW.

6. Plaintiff has filed a claim or been scheduled as a claimant by DAMI in the Bankruptcy based upon allegations set forth in the Petition that DAMI's Sweepstakes violated the KCPA. Plaintiff has entered into a Settlement Agreement with DAMI (the "Settlement Agreement") which has been approved by the Bankruptcy Court (the "Settlement Order").

7. The parties hereby agree to the entry of this Journal Entry of Consent Judgment by this Court in order to resolve all matters of dispute between them arising from the Petition in this action and to encourage prompt compliance with state law.

8. This Journal Entry of Consent Judgment is in addition to and does not supersede any previous judgment obtained by Plaintiff against, or pre-petition agreement entered into with, any of the Defendants. The terms of any such judgment or pre-petition agreement are independent of the

terms of this Journal Entry of Consent Judgment and are not in any way modified or limited by this Journal Entry of Consent Judgment except where the terms are expressly contrary to the terms of such judgment or pre-petition agreement.

9. For purposes of this Journal Entry of Consent Judgment, the term "Plaintiff's Allegations" shall mean (a) those civil claims set forth in the Petition filed under the KCPA with respect to the Sweepstakes in the State of Kansas and (b) any other civil claims, suspected or unsuspected, known or unknown, which Plaintiff has ever asserted or could have asserted, or has had, now had or hereafter may have, against Defendants; pursuant to the KCPA based upon the Sweepstakes in the State of Kansas.

PLAINTIFF'S POSITION

10. Plaintiff alleges that DAMI, through direct mail solicitations, sold "pay per call" services to consumers in the State of Kansas through the use of sweepstakes and other prize promotions. Examples of the Sweepstakes are appended hereto as Exhibits "1" through "4." The Plaintiff alleges that the Sweepstakes violate the KCPA by, *inter alia*, deceptively representing to consumers, directly or by implication, that they have won a significant prize and that consumers should promptly call a (900) telephone number to claim their prize. Plaintiff alleges that consumers who called the (900) telephone number were billed, on average, about \$30.00 for the call and, rather than receive the significant prize promised in the Sweepstakes, received a "prize" of \$1.00, or nothing at all.

11. The Plaintiff further alleges that DAMI collected millions of dollars from consumers nationwide, including consumers in the State of Kansas, as a result of the violations of the KCPA.

DEFENDANTS' POSITION

12. Defendants deny the allegations in paragraphs 1, 4, 10 and 11 herein. Defendants specifically deny that the Sweepstakes violate any law or statute, including, without limitation, the KCPA. Brown specifically denies that, in connection with DAMI's operation and conduct of the Sweepstakes, he individually violated any law or statute of the State of Kansas including, without limitation, the KCPA. Brown further states that, prior to the filing of this Petition, Plaintiff has never filed any action or proceeding of any nature alleging that Brown has acted individually in any manner in violation of any law or statute of the State of Kansas.

ORDER

IT IS HEREBY AGREED by the Plaintiff and by the Defendants, and it is hereby ORDERED, that:

13. This Court has jurisdiction over the subject matter of this case and the parties hereto and that venue is proper.

14. The Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Journal Entry of Consent Judgment.

15. The parties to this Journal Entry of Consent Judgment are the State of Kansas and Defendants, Brown, individually, and DAMI, whether doing business in its own name, under any tradename, such as, ACG Independent Judging Organization, Audit Control Bureau, Department of Consumer Entitlements, Equity Disbursement Group, and Equity Financial Group, or through any subsidiary, division, or other device. Although Brown is a party to this Journal Entry of Consent Judgment, his obligations, in his individual capacity, under this Journal Entry are limited to those obligations specifically provided herein.

16. DAMI shall comply with all provisions of the Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief in the case of *Federal Trade Commission v. Direct American Marketers, Inc. and Anthony C. Brown*, a copy of which is appended hereto as Exhibit "5" and incorporated herein by reference ("FTC Order"). Brown shall comply with those provisions of the FTC Order that specifically pertain to him, including those provisions that pertain jointly to DAMI and him.

17. Without altering the denials set forth in paragraph 12 hereof, Defendants state that, as of August 31, 1997, DAMI has discontinued the Sweepstakes. Defendants agree that they shall not engage, either in their respective corporate or individual capacities or through an affiliate, in any future Sweepstakes, as defined in paragraph 1 hereof, or "prize promotions," as that term is defined in the FTC Order.

18. Defendants shall not sell, market, rent or otherwise distribute any list containing the names, addresses, or telephone numbers of any consumers if the information was obtained, in whole or in part, by the Defendants in connection with the Sweepstakes.

19. In addition to the recordkeeping, reporting, and production requirements contained in the FTC Order, for five years after the date of execution of this Journal Entry of Consent Judgment, DAMI shall maintain and, no later than fifteen (15) days following receipt of a request from the Plaintiff, make available to the Plaintiff copies of all records that will demonstrate compliance with the requirements of this Journal Entry.

20. This Journal Entry of Consent Judgment does not constitute an admission by the Defendants for any purpose of any of the allegations made by the Plaintiff or any violation of any state or federal law. Defendants enter into this Journal Entry without admitting any wrongdoing and for settlement purposes only. This Journal Entry does not constitute an approval by the Plaintiff of

any of DAMI's Sweepstakes or prize promotions, and Defendants shall not make any representation to the contrary. Nothing in this Journal Entry shall be deemed to permit or authorize any violation of the laws of any state or otherwise be construed to relieve Defendants of any duty to comply with the applicable laws, rules and regulations of any state, nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by such laws, rules or regulations.

21. This Journal Entry of Consent Judgment shall resolve all of the Plaintiff's Allegations as defined in paragraph 9 above as of the date of this Journal Entry. However, nothing in this Journal Entry shall be construed to deprive any consumer or other person or entity of any right under the law. Furthermore, except as set forth herein expressly to the contrary, nothing herein shall impair any right which the parties may have to oppose in any manner the assertion of any rights under the law by any person or entity.

22. Upon entry of a Settlement Order that has become final and nonappealable (a "Final Settlement Order") (unless the requirement of the finality of the Settlement Order is waived by the parties in writing pursuant to paragraph 27(d) of the Settlement Agreement) and upon timely payment of the amount due under paragraph 23 and, if applicable, paragraph 24 of this Journal Entry of Consent Judgment, the Plaintiff shall (1) dismiss with prejudice any civil action pending in any state court of the State of Kansas against Defendants and/or any of DAMI's past or current officers, directors, shareholders, shareholders' spouses and/or employees (the "Related DAMI Parties") based on Plaintiff's Allegations as Plaintiff's Allegations apply to DAMI or the Related DAMI Parties; (2) terminate any pending administrative, regulatory, or civil proceeding and any pending administrative investigative demands against Defendants and/or any of the Related DAMI Parties based on Plaintiff's Allegations; and (3) shall not file or voluntarily intervene in any administrative, regulatory, or civil action against Defendants or the Related DAMI Parties based on Plaintiff's

Allegations as Plaintiff's Allegations apply to DAMI or the Related DAMI Parties. Notwithstanding the foregoing, nothing herein shall modify or limit Plaintiff's right under paragraph 31 hereof.

23. In full and complete monetary satisfaction of Plaintiff's Allegations and the claim filed in the Bankruptcy by the Plaintiff and by the other states that are parties to the Settlement Agreement (the "States"), DAMI shall pay and/or cause to be paid the sum of three million dollars (\$3,000,000) to the National Association of Attorneys General ("NAAG"), as disbursing agent for the States, within fifteen (15) days from the entry of the Settlement Order (unless the date of payment is extended pursuant to paragraph 14(c) of the Settlement Agreement), provided that such Settlement Order has become final and nonappealable (unless the requirement of the finality of the Settlement Order is waived by the parties in writing pursuant to paragraph 27(d) of the Settlement Agreement) (the "Settlement Payment" and the "Payment Date", respectively). The distribution of the Settlement Payment to the Plaintiff and the States shall be determined solely by the States. The funds may be used by the Plaintiff for any of the following purposes: investigative fees and other consumer protection purposes pursuant to K.S.A. 50-623, *et seq.*

24. DAMI may extend the Payment Date for a maximum of fifteen (15) days by paying each of the States, including the State of Kansas, the sum of \$500.00 per day (the "Late Payment") for each day that DAMI is late in making the Settlement Payment. To extend the Payment Date as provided herein, DAMI must send each Late Payment to NAAG by wire transfer within two (2) business days from the date that a Late Payment has accrued. If DAMI fails to timely make any Late Payment or to timely make the Settlement Payment (after any extension of the Payment Date as provided in this paragraph), DAMI's Bankruptcy may be converted to a Chapter 7 case as provided in paragraph 16 of the Settlement Agreement. The payment of any Late Payment provided herein shall not alter in any way DAMI's other obligations under this Journal Entry of Consent Judgment.

25. Upon timely payment by DAMI of the entire amount of the Settlement Payment as provided in paragraphs 23 and 24 hereof and DAMI's execution of the joint letter to be sent to the FTC by DAMI and the States Committee pursuant to paragraph 1(d) of the Settlement Agreement, any monetary claims of Plaintiff existing as of the entry of the Journal Entry of Consent Judgment against the Related DAMI Parties based upon Plaintiff's Allegations, as Plaintiff's Allegations apply to DAMI or the Related DAMI Parties, shall also be completely and fully satisfied and extinguished.

26. [Paragraph Intentionally Left Blank.]

27. Notwithstanding anything contained in this Journal Entry of Consent Judgment, in the event that DAMI defaults on its obligation to make the Settlement Payment in a timely manner provided by paragraphs 23 and 24 herein, Plaintiff shall pursue any monetary claims for payment of the Settlement Payment and/or any claim filed in the Bankruptcy as provided in paragraph 12 of the Settlement Agreement. Plaintiff expressly reserves all other rights and remedies as permitted by law.

28. No later than 15 days following receipt of a written request from the Plaintiff, DAMI shall provide the Plaintiff with information regarding consumers who participated in the Sweepstakes or prize promotions as necessary to facilitate the payment of restitution to consumers. At the discretion of the Plaintiff, DAMI shall make the requested information available to the Plaintiff in electronic format, in a form readable by the Plaintiff, and/or hard copy.

29. The Court shall retain jurisdiction for the purposes of enabling any party to this Journal Entry of Consent Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for: (A) the construction or implementation of this Journal Entry and (B) the enforcement of this Journal Entry and punishment of violations thereof.

30. In the event that any Defendant fails to comply with any of the provisions of this Journal Entry of Consent Judgment, such Defendant shall be liable to the Plaintiff for all costs,

including reasonable attorneys' fees, incurred in enforcing this Journal Entry (i.e., a defendant shall not be liable for the noncompliance of any other defendant).

31. Other than paragraph 27 herein, nothing herein shall be construed to exonerate Defendants from any contempt of any provision of this Journal Entry of Consent Judgment after the date of its entry, to compromise the authority of the Attorney General of the State of Kansas to initiate a proceeding for any contempt, or to compromise the authority of the court to punish as a contempt any violation of this Journal Entry of Consent Judgment as expressly provided in this Journal Entry, this Journal Entry shall not be construed to limit the authority of the Attorney General to protect the interests of the State of Kansas or the people of Kansas.

32. Each of the Defendants has read and understands this Journal Entry of Consent Judgment and enters into it voluntarily. The Defendants represent that each of them have been advised by legal counsel of the meaning and effect of each provision of this Journal Entry.

33. Each of the parties acknowledge that it/he may subsequently discover facts different from or in addition to the facts which it/he knows or believes to be true with respect to the matters in this Journal Entry of Consent Judgment and assumes the risk of the discovery of such facts.

34. The Plaintiff and each of the Defendants represents and warrants that:

a. This Journal Entry of Consent Judgment is executed without reliance on any statement, representation, promise, inducement, understanding, or agreement by or on behalf of any other party hereto, or on behalf of any representative or agent employed by any of them, other than the matters expressly set forth herein and in the Settlement Agreement and the exhibits thereto (collectively, this Journal Entry of Consent Judgment, the Settlement Agreement and the exhibits attached thereto are referred to as the "Settlement Documents");

b. No promise, inducement, understanding or agreement not in the Settlement Documents has been made to or with any party, and the Settlement Documents represent the entire written agreement between the parties;

c. This Journal Entry of Consent Judgment is the product of the effort of all parties, and, as a result, it will not be construed, and no presumption will arise, based upon who drafted this Journal Entry;

d. No claim or obligation referred to in this Journal Entry of Consent Judgment has been assigned, transferred, hypothecated, pledged, mortgaged, or set over in any manner whatsoever, in whole or in part, to any third person or entity, and each party to this Journal Entry has the sole and exclusive right to settle all of the claims and obligations described and settled in this Journal Entry;

e. The terms of this Journal Entry of Consent Judgment are contractual and not mere recitals; and

f. The various headings in this Journal Entry of Consent Judgment are inserted for convenience only and shall not affect this Journal Entry or any provisions hereof.

35. This Journal Entry of Consent Judgment shall be binding on, and shall inure to the benefit of, the Plaintiff, the Defendants, and their respective successors and assigns, including any Chapter 7 or Chapter 11 trustee appointed or elected in DAMI's Bankruptcy.

36. This Journal Entry of Consent Judgment shall only be enforceable by the parties hereto. Notwithstanding the foregoing, in accordance with the provisions of paragraphs 21, 22 and 25 hereof, any of the Related DAMI Parties shall be entitled to rely upon, and to assert as a defense in any action or proceedings which Plaintiff may bring based upon Plaintiff's Allegations as

Plaintiff's Allegations apply to DAMI or the Related DAMI Parties, the provisions of this Journal Entry of Consent Judgment.

37. If there is any ambiguity, inconsistency or conflict between this Journal Entry of Consent Judgment and the Settlement Agreement, the language and terms of this Journal Entry shall control.

38. Anthony Brown represents and declares that as of the date of execution of this Agreement, he is the President and Chief Executive Officer of DAMI, and, as such, has been authorized by said corporation to enter this Journal Entry of Consent Judgment for and on behalf of DAMI.

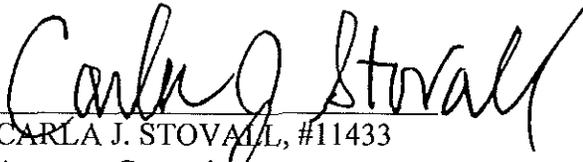
IT IS SO ORDERED.

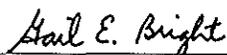
A handwritten signature in black ink, appearing to read "Eric S. Rosen". The signature is written in a cursive, flowing style.

Judge of the District Court

AGREED AS TO FORM AND SUBSTANCE:

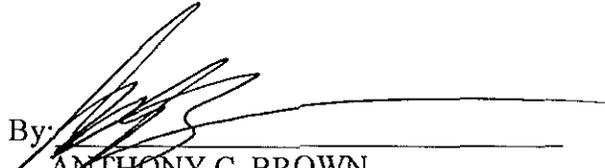
STATE OF KANSAS


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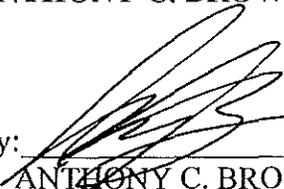
Attorney for DAMI

By: _____

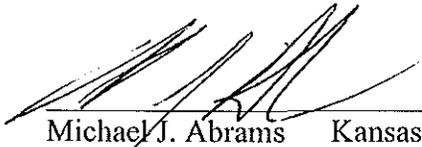
Local Counsel for DAMI

Dated: _____

ANTHONY C. BROWN, Individually

By:  _____
ANTHONY C. BROWN

Dated: 12/8/98



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Dated: December 21, 1998