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IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
DIVISION 8

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

Plaintiff,

vs.

AMERICAN AUTO CONSULTANTS, INC., and
JOHN WILLIAM PATTERSON,
a/k/a JAY PATTERSON, individually, and
d/b/a AMERICAN AUTO CONSULTANTS,

Defendants.

Case No. 99-C-15813

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 18th day of November, 1999, comes before the Court the Plaintiff's Petition for Approval of the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Derek L. Schmidt, Assistant Attorney General. Defendants, American Auto Consultants, Inc., and John William Patterson, appear by and through counsel, R. Bruce Kips.

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

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THE PARTIES

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 statutory and common law of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Defendant American Auto Consultants, Inc., (hereinafter "Defendant Corporation") is a corporation organized under the laws of the State of Missouri. Defendant Corporation is an unauthorized foreign corporation doing business in Kansas and is not registered with the Kansas Secretary of State. Defendant Corporation's principal place of business is located at 9393 West 110th Street, Suite 500, Overland Park, Kansas 66210.
4. Defendant John William Patterson (hereinafter "Defendant Patterson") is an individual who is the founder, president, and sole officer, director and shareholder of Defendant Corporation. He is now the sole employee of Defendant Corporation.
5. Defendants are suppliers within the definition of K.S.A. 50-624(i).
6. At all times relevant hereto, and in the ordinary course of business, Defendants have engaged in consumer transactions within the definition of K.S.A. 50-624(c).

NATURE OF DEFENDANTS' BUSINESS

7. Defendants are in the business of selling various business opportunity materials to consumers, which allow consumers to become "auto consultants." The business opportunity materials sold by Defendants have varied in price over the years from about \$500.00 to at least \$18,500.00. Consumers who purchase business opportunity materials from Defendants receive some combination of the following merchandise and services, or similar merchandise and services, or a portion thereof: an initial personal training session, an electronic check system-merchant account, marketing guidance, an operations manual, new vehicle pricing software, a promotional video, television and radio commercial master tapes, access to toll-free fax and telephone lines to contact Defendants, a bi-weekly customer and dealer rebate and incentive

listing, access to a new vehicle research and locating service, an IBM compatible computer with accessories, and an Internet web site and e-mail address.

8. As used in this Consent Judgment, the phrase "Defendants' business opportunity materials" means the merchandise and/or services described in paragraph seven (7), or similar merchandise and/or services sold and/or advertised to consumers by or on behalf of Defendants, or any combination of such merchandise and/or services or portion thereof.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over this case under statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

10. The Court has personal jurisdiction over the parties under statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and by consent of the parties.

11. The parties agree that venue is proper in the Tenth Judicial District of Kansas (Johnson County) and waive any objection to venue.

12. Both Defendants waive service of process related to this Consent Judgment and appear voluntarily as allowed by K.S.A. 60-303(d).

ALLEGATIONS

13. The Attorney General has conducted an investigation of Defendants' business practices in the State of Kansas pursuant to the authority and requirements of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

14. Based upon information gathered in the course of the investigation described in paragraph thirteen (13), the Attorney General alleges that Defendants have committed, are committing and/or are about to commit the following violations of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*:

- a. Defendants caused Defendants' business opportunity materials to be delivered, unordered, to consumers and then caused consumers to be billed, and Defendants accepted payment, as if the consumers had purchased the packages. Defendants' actions constitute an attempt to collect for billing for goods or services received as an unconditional gift, a deceptive act or practice in violation of K.S.A. 50-617(b).
- b. Defendants accepted payment from consumers for the purchase of Defendants' business opportunity materials and then, at the conclusion of a trial period, accepted return of Defendants' business opportunity materials but failed to refund consumers' money. As a result, consumers had neither their money nor the business opportunity materials and, thus, could receive no material benefit from the subject of the transaction, an unconscionable act or practice in violation of K.S.A. 50-627(b)(3).
- c. Defendants have represented to consumers, through advertisements containing statements such as "TRY IT - FREE!", that consumers could try Defendants' business opportunity materials without cost but, in truth and in fact, consumers were required to pay shipping and handling costs of \$9.95 or a similar amount in order to receive Defendants' business opportunity materials. This constitutes a representation made by Defendants, knowingly or with reason to know, that Defendants' business opportunity materials have characteristics or uses (a free-from-cost trial period) that they do not have, a deceptive act or practice in violation of K.S.A. 50-626(b)(1)(A).
- d. Defendants have represented to consumers, through advertisements containing statements such as "TRY IT - FREE!", that consumers could try Defendants' business opportunity materials without cost but, in truth and in fact, consumers were required to pay shipping and handling costs of \$9.95 or a similar amount in order to receive Defendants' business opportunity materials. This constitutes a

willful use of exaggeration, falsehood, innuendo or ambiguity as to a material fact (the cost to the consumer of trying Defendants' business opportunity materials), a deceptive act or practice in violation of K.S.A. 50-626(b)(2).

- e. Defendants have represented to consumers, through advertisements containing statements such as "TRY IT - FREE!", that consumers could try Defendants' business opportunity materials without cost but, in truth and in fact, consumers were required to pay shipping and handling costs of \$9.95 or a similar amount in order to receive Defendants' business opportunity materials. This constitutes a willful failure to state a material fact (that payment is required), or a willful concealment, suppression or omission of a material fact, a deceptive act or practice in violation of K.S.A. 50-626(b)(3).
- f. Defendants have represented to consumers, through advertisements containing statements such as "\$2,000/wk", "\$500/sale", "Make \$100,000 This Year", and similar representations made orally and/or in writing, that purchase and use of Defendants' business opportunity materials can result in specific levels of earnings by consumers. In truth and in fact, Defendants' had no reasonable basis to substantiate such earnings claims. Defendants made each such representation that Defendants' business opportunity materials have benefits or characteristics (specific earnings potential) knowing or with reason to know that Defendants did not rely upon and possess a reasonable basis for making such representations, a deceptive act or practice in violation of K.S.A. 50-626(b)(1)(F).
- g. Defendants have represented to consumers, through advertisements containing statements such as "\$2,000/wk", "\$500/sale", "Make \$100,000 this Year", and similar representations made orally and/or in writing, that purchase and use of Defendants' business opportunity materials can result in specific levels of earnings by consumers. In truth and in fact, Defendants had no reasonable basis to

substantiate these earnings claims, and Defendants are unaware of any person or entity who has purchased business opportunity materials from Defendants and has achieved these represented levels of earnings. This constitutes a willful use of exaggeration, falsehood, innuendo or ambiguity as to a material fact (that specific earnings levels can be achieved), a deceptive act or practice in violation of K.S.A. 50-626(b)(3).

- h. Defendants have sold Defendants' business opportunity materials to consumers but failed to inform consumers, prior to the consumer signing a contract, that certain future upgrades of software and the like are required to keep pricing accurate over time and that consumers must pay additional sums to obtain software updates. This constitutes a willful failure to state a material fact (that additional payments will be required to operate the business opportunity properly and with current data), or the willful concealment, suppression or omission of a material fact, a deceptive act or practice in violation of K.S.A. 50-626(b)(3).
- i. By and through written information delivered to consumers, Defendants represented to consumers that by paying Defendants \$495.00 plus \$19.95 per month for the purchase of Defendants' business opportunity materials, consumers could receive the same or equivalent business start-up and operating materials and/or services as would otherwise cost consumers \$107,000.00 plus \$25,000.00 per year if acquired from other sources. By and through such written information, Defendants represented that Defendants' business opportunity materials had characteristics (equivalent and/or comparable worth, utility and value as similar services and/or materials from other suppliers valued at \$107,000.00 plus \$25,000.00 per year) knowing or with reason to know that Defendants' business opportunity materials do not have such characteristics, uses or benefits, a deceptive act or practice in violation of K.S.A. 50-626(b)(1)(A).

j. By and through written information delivered to consumers, Defendants represented to consumers that by paying Defendants \$495.00 plus \$19.95 per month for the purchase of Defendants' business opportunity materials, consumers could receive the same or equivalent business start-up and operating materials and/or services as would otherwise cost consumers \$107,000.00 plus \$25,000.00 per year if acquired from other sources. By and through such written information, Defendants disparaged the property, services or business of another by making, knowingly or with reason to know, false or misleading representations of a material fact (the price charged by others for the sale to consumers of merchandise and/or services comparable to those sold by Defendants), a deceptive act or practice in violation of K.S.A. 50-626(b)(4).

15. For the purpose of settlement, the parties have agreed to entry of this Journal Entry of Consent Judgment without trial or adjudication of any issue of fact or law.

INJUNCTIVE RELIEF

16. Defendants agree to refrain from and to be permanently enjoined from those acts and practices set forth in paragraph fourteen (14), including all subparagraphs thereof. Defendants agree that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

17. Defendants agree to refrain from and to be permanently enjoined from making any representations whatsoever, whether orally or in writing, of earnings (whether actual or potential) associated with purchase and/or use of Defendants' business opportunity materials. Defendants agree that the making of any such representations, after the date of this Consent Judgment, shall constitute a violation of this Order.

18. Defendants agree to refrain from and to be permanently enjoined from conducting any business whatsoever, including the advertisement, distribution, sale, or purchase of any merchandise, property, materials, or services, in the State of Kansas, or from any location in the

State of Kansas, unless Defendants are in full compliance with the statutory and common law requirements governing foreign corporations doing business in Kansas, including the requirements of K.S.A. 17-7301(b). Defendants agree that any failure to so restrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

19. Defendants agree to refrain from and to be permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by or authority from the State of Kansas and/or the Attorney General of the State of Kansas for Defendants' business practices. Defendants agree that the making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Order.

CONSUMER DAMAGES

20. Defendants agree to pay \$3,624.10 to the "Office of the Attorney General" of the State of Kansas at the time of signing this Consent Judgment as restitution to damaged consumers who have filed complaints against Defendants with the Office of the Attorney General, as set forth in paragraph twenty-one (21). Payment shall be by certified check. Defendants agree that failure to make such payment shall constitute a violation of this Order.

21. The consumers to receive restitution as provided by paragraph twenty (20) and the amounts of such restitution are as follows:

Pearl Johnson	\$1,029.90
Glenn J. Chronister	\$524.90
Robert G. Camacho	\$514.95
Todd H. Rampe	\$514.95
Emily Ann Smith	\$514.95
Joseph Zenchak	\$514.95
Glenn F. Matchett	\$9.50

22. Defendants agree to resolve to the satisfaction of the Attorney General any consumer complaints that may be filed against Defendants with the Office of the Attorney General within 180 days after the filing of this Consent Judgment. Any such complaints shall be

resolved within ten (10) days after the Attorney General notifies Defendants, in writing, of such complaint and requests Defendants to resolve such complaint. Defendants agree that any failure to resolve any such complaint to the satisfaction of the Attorney General, within the specified ten-day period, shall constitute a violation of this Order.

INVESTIGATIVE FEES AND CIVIL PENALTIES

23. Defendants agree to pay \$3,750.00 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas.

24. In addition to the amount specified in paragraph twenty-three (23), Defendants agree to pay \$3,750.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas.

25. The amounts specified in paragraphs twenty-three (23) and twenty-four (24) shall be paid as follows:

<u>Payment Number</u>	<u>Date Due</u>	<u>Amount</u>
1	December 1, 1999	\$500.00
2	January 1, 1999	\$500.00
3	February 1, 2000	\$500.00
4	March 1, 2000	\$500.00
5	April 1, 2000	\$500.00
6	May 1, 2000	\$500.00
7	June 1, 2000	\$500.00
8	July 1, 2000	\$500.00
9	August 1, 2000	\$500.00
10	September 1, 2000	\$500.00
11	October 1, 2000	\$500.00
12	November 1, 2000	\$500.00
13	December 1, 2000	\$500.00
14	January 1, 2000	\$500.00
15	February 1, 2001	\$500.00

Each such payment shall be by cashier's check payable to the "Office of the Attorney General" and shall be delivered by United States Mail or otherwise to the Office of the Attorney General, Consumer Protection Division, Kansas Judicial Center, 301 S.W. 10th Avenue, Lower Level, Topeka, Kansas 66612-1597.

OTHER PROVISIONS

26. Defendants agree to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendants act individually and/or through their principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns, or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated, or controlled by Defendants.

27. 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.

28. 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 portions, provisions, or parts.

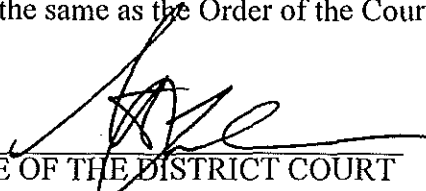
29. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

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 and any monies owed hereunder by Defendants immediately become a judgment upon filing.

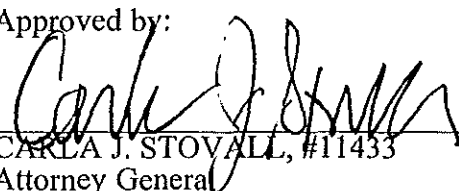
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants, jointly and severally, and in favor of Plaintiff in the amount of \$11,124.10.


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

IT IS SO ORDERED.



JUDGE OF THE DISTRICT COURT

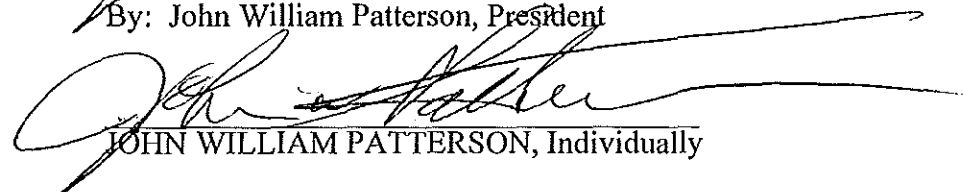
Approved by:


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