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 U.S. DISTRICT COURT
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GENERAL JURISDICTION
 TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 5

STATE OF KANSAS, *ex rel.*)
 CARLA J. STOVALL, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 REGINALD SCARBROUGH, and)
 AMERICAN CHAMBER FOR THE PEOPLE, INC.,)
)
 Defendants.)

Case No. 98 CV 1351

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 10th day of April, 2000, comes before the Court 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 James J. Welch, Assistant Attorney General. Defendants appear by and through Benoit Swinnen.

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

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.* and the Kansas Charitable Solicitations and Organizations Act, K.S.A. §17-1760 *et seq.*

3. Defendant Reginald Scarbrough is an individual and the President, Director, Resident Agent, and salesperson for American Chamber for the People, Inc.. Defendant Reginald Scarbrough may be served with process by the Attorney General's Office at 1815 SW Lane, Topeka, Kansas 66604, or wherever in Kansas he may be found.

4. American Chamber for the People, Inc. was a domestic not-for-profit corporation organized under the laws of the state of Kansas. The corporation was forfeited on September 15, 1998. The principal office of the corporation was located 1800 Harrison, Topeka, Kansas 66612; however, the business continues to operate from 1815 SW Lane, Topeka, Kansas 66604. The business may be served with process by the Attorney General's Office by serving its registered agent, and sole owner/operator, Reginald Scarbrough at 1815 SW Lane, Topeka, Kansas 66604, or wherever in Kansas he may be found.

5. Defendant is a supplier, as defined by K.S.A. §50-624(i), and has engaged in consumer transactions within the definition of K.S.A. §50-624(c) and (h), with consumers. Defendants are also professional fundraisers, as defined by K.S.A. §17-1760(d) and have made solicitations for donations, as defined by K.S.A. §17-1760(f).

6. Defendants admit the Court has personal and subject matter jurisdiction over the parties.

7. Venue is proper in Shawnee County because acts or practices declared to be a violation of the Kansas Consumer Protection Act and/or the Kansas Charitable Solicitations and Organizations Act occurred in such county and because Defendants' principal place of business is in such county.

8. The Attorney General alleges: (i) that Defendants engaged and (ii) that Defendants admitted to engaging in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act and/or the Kansas Charitable Solicitations and Organizations Act :

- a. Between at least February, 1994 and November, 1997, Defendants told consumers that Defendants would provide quarterly newsletters and/or annual directories; however, Defendants have, to date, provided one newsletter to only a few consumers, and have failed to provide any newsletters to the majority of consumers. Defendants have, to date, provided no consumer with any type of directory. The availability of newsletters and/or directories are calculated to induce consumers to make purchases from Defendants, and are in violation of K.S.A. §50-626(b)(2), in that they are the willful use of misrepresentation, exaggeration, falsehood, innuendo, and ambiguity as to a material fact.
- b. Between at least February, 1997 and the present, Defendants have contacted consumers and potential donors, soliciting consumers and potential donors to make donations and/or purchase memberships and/or advertising space in Defendants' directory. During these solicitations, Defendants has represented to consumers and potential donors that funds received by Defendants would be used to benefit members of American Chamber for the People, Inc. through publication of a directory of American Chamber for the People, Inc. members; however, Defendants

have admitted that no member has benefitted from funds collected by Defendants. Specifically, Defendants admit that, to date, no directory has been provided to any member. Further, Defendants have admitted that Defendants anticipate publication and distribution of such directory at no cost. This is in violation of K.S.A. §50-626(b)(2), in that it is the willful use of misrepresentation, exaggeration, falsehood, innuendo, and ambiguity as to a material fact. This is also in violation of K.S.A. §17-1769(b)(1) in that it is the intentional use in a solicitation of exaggeration, innuendo, and ambiguity as to a material fact.

- c. Defendants represented to consumers and potential donors that funds received by Defendants would be used to benefit children "from Holton to Topeka;" however, Defendants have admitted that no such children have benefitted from funds collected by Defendants. Specifically, Defendants contend that the only beneficiaries of donations collected by Defendants are its members, through publication of Defendants' directory, which has, to date, not been provided to any member. This is in violation of K.S.A. §50-626(b)(1)(B), in that it is the representation made knowingly and with reason to know that Defendants have a sponsorship, approval, status, affiliation and connection that the defendants do not have. This is also in violation of K.S.A. §17-1769(b)(1) in that it is the intentional use in a solicitation of exaggeration, innuendo, and ambiguity as to a material fact.
- d. Defendants' receipts/acknowledgments (a true and correct representative copy is attached hereto and marked as Exhibit A) to consumers who have purchased membership and/or advertising space from Defendants include "Tax # 213-437-7;" however, such number is neither Defendants' tax identification number, nor a valid

format for any tax number issued through the Kansas Department of Revenue or the Internal Revenue Service. This is in violation of K.S.A. §50-626(b)(1)(B), in that it is the representation that Defendants have a sponsorship, approval, status, affiliation and connection which Defendants do not have. Such use of an invalid tax identification number is also in violation of K.S.A. §17-1769(b)(1) in that it is the intentional use in a solicitation of exaggeration, innuendo, and ambiguity as to a material fact.

- e. Defendants failed to disclose to consumers and potential donors solicited, as described above, that monies collected from consumers and donors were used for the benefit of Defendant Reginald Scarbrough; specifically, that such monies were used to provide Mr. Scarbrough with salary and living expenses, and to make improvements to Mr. Scarbrough's residence, 1815 SW Lane, Topeka, Kansas. This is in violation of K.S.A. §50-626(b)(3) and of K.S.A. §17-1769(b)(2), in that it is the willful and intentional failure to state a material fact, and the willful and intentional concealment, suppression and omission of a material fact.
- f. Defendants' misrepresentations to consumers and potential donors, as set out above, constitute an unconscionable practice, in violation of K.S.A. §50-627(b)(1) and of K.S.A. §17-1769(c)(2)(A), in that Defendants took advantage of the inability of these persons reasonably to protect the consumer's interests because of these persons' inability to determine:
 - 1. that monies provided to Defendants were not used to benefit children "from Holton to Topeka;"

2. that monies provided to Defendants were not used to publish and distribute newsletters or directories;
 3. that monies provided to Defendants were used for the benefit of Defendant Reginald Scarbrough as "salary," living expenses, and improvements to his residence.
- g. Although Defendants are acting as professional fundraisers and soliciting funds from within the state of Kansas, Defendants failed to register with the Kansas Secretary of State's Office, in violation of K.S.A. §17-1765.
- h. Defendants solicited persons to make donations without disclosing at the point of such solicitations the information required pursuant to K.S.A. §17-1766.
- i. Defendants solicited consumers to purchase membership into the American Chamber for the People, Inc. and/or Defendants' literature at such consumers' places of business, at consumers' homes, or at other places which were places other than the place of business of Defendants. Defendants sell no membership, newsletter, or directory for less than \$25.00. Defendants' solicitations and sales of memberships and/or literature are, therefore, "door-to-door sales," as defined by K.S.A. §50-640(c)(1). In each of these solicitations which resulted in sales, the Defendants failed to provide to the consumer the written notice of cancellation required by K.S.A. §50-640(b)(1) and (b)(2). In each of these sales, Defendants also failed to inform consumers orally at the point of sale, of such consumers' rights to cancel, in violation of K.S.A. §50-640(b)(5). The failure to provide the required notices constitutes a deceptive act in violation of K.S.A. §50-626, as enumerated in K.S.A. 50-640(b).

9. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law; however, Defendants, by entering into this Consent Judgment, shall not be deemed to admit the violations of the Kansas Consumer Protection Act alleged herein, or any violation of state or federal law. Defendants have agreed to entry of this Consent Judgment without admitting any wrongdoing and for settlement purposes only.

10. Defendants agree to refrain from and to be permanently enjoined from engaging in acts and practices or similar acts and practices described in paragraph eight (8) in violation of the Kansas Consumer Protection Act and/or the Kansas Charitable Solicitations and Organizations Act and that the same shall constitute a violation of this Order and will result in prosecution for indirect contempt. Such acts and practices include, but are not limited to:

- a. soliciting any contributions while not properly registered, in accordance with the Kansas Charitable Solicitations and Organizations Act;
- b. engaging in any business venture with the pre-existing knowledge that such business venture will fail;
- c. conducting any type of sales presentation or solicitation for contributions which, by its very nature, is deceptive and/or unconscionable in any way;
- d. misrepresenting any affiliation, connection, status, or the like; or using any type of registration number or other identifier which does not, in fact, exist;
- e. accepting payment for any product or service in door-to-door sales without providing a full and complete notice to consumers of consumers right of cancellation which is in compliance with K.S.A. §50-640; and

- f. conducting any type of sales presentation or solicitation for contributions which includes, in any form, deception, untruth, falsehood, unreasonable exaggeration of material fact, or unconscionability;
11. The provisions of this Consent Judgment will be applicable to Defendants, and every employee, agent or representative of Defendants.
12. Defendants agree to resolve any future complaints filed with the Office of the Attorney General regarding Defendants after the date of this Consent Judgment to the satisfaction of the Attorney General within thirty (30) days of the date such complaint is forwarded to Defendants for resolution.
13. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.
14. Defendants agree to pay \$2,500.00 in investigation fees and expenses to the Office of the Attorney General of the State of Kansas and \$2,500.00 in civil penalties to the State of Kansas. Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas, beginning at the time of Defendant's signing this Consent Judgment. Payment of \$35.00 per month shall commence on or before April 15, 2000, with subsequent \$35.00 payments thereafter due on or before the fifteenth (15th) day of each month, until the entire amount payable is satisfied. Defendant agrees that failure to make timely payments, as set out above, will result in the entire outstanding balance becoming due within five (5) days of the first payment missed.
15. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

16. 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.

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

18. 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.

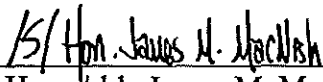
19. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or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

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the agreement of the parties contained herein are adopted and approved by 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 in favor of Plaintiff in the amount of \$5,000.00.

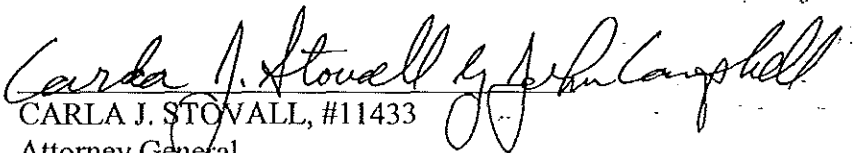
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act and the provisions of K.S.A. §50-632(b), and the Kansas Charitable Solicitations and Organizations Act and provisions of K.S.A. §17-1768(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

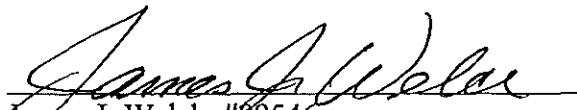
IT IS SO ORDERED.



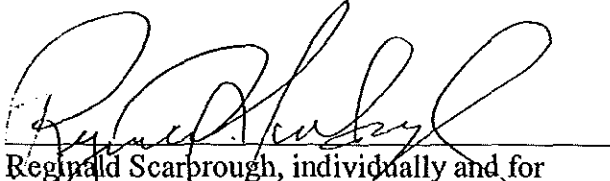
The Honorable James M. MacNish
Judge of the District Court

PREPARED AND APPROVED BY:

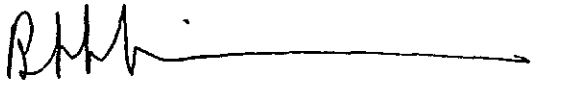

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