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Office of the Attorney General
Consumer Protection Division
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FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS
2016 OCT -7 A 10:54

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
BENJAMIN D. GEORGE, an individual)
et al.)
)
Defendants.)

Case No. 2014-CV-000597

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 6th day of October 2016, the parties' Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, ("Plaintiff" or "Attorney General") appears by and through Kathryn Carter, Assistant Attorney General. Defendants appear by and through the undersigned counsel.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

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

3. Benjamin D. George and Jody C. Rookstool, individuals residing in Utah, were named as Defendants in the petition filed herein, but dismissed from the present action by the Court on October 8, 2015.

4. Defendant KMR Medical, LLC ("Defendant KMR") was at all times relevant to this proceeding a Utah limited liability company with a principal place of business at 831 East 340 South, Suite 150, American Fork, Utah 84003.

5. Defendant KMR was at all times relevant to this proceeding a supplier within the definition of K.S.A. 50-624(1).

6. Defendant KPM Capital, LLC ("Defendant KPM") was at all times relevant to this proceeding a Utah limited liability company with a principal place of business at 831 East 340 South, Suite 150, American Fork, Utah 84003.

7. Defendant KPM was at all times relevant to this proceeding a supplier within the definition of K.S.A. 50-624(1).

8. Defendant Arizona Medical Supply, LLC d/b/a Western Medical Supply ("Defendant Arizona Medical") was at all times relevant to this proceeding an Arizona limited

liability company with its previous principal place of business at 831 East 340 South, Suite 150, American Fork, Utah 84003.

9. Defendant Arizona Medical was at all times relevant to this proceeding a supplier within the definition of K.S.A. 50-624(I).

10. Defendant Medical Pendant Billing, LLC d/b/a US Lifecare (“Defendant Medical Pendant”) was at all times relevant to this proceeding a Utah limited liability company with its previous principal place of business at 831 East 340 South, American Fork, Utah 84003.

11. Defendant Medical Pendant was at all times relevant to this proceeding a supplier within the definition of K.S.A. 50-624(I).

12. As used herein, the term “Defendants” shall mean, and is limited to, Defendant KMR, Defendant KPM, Defendant Arizona Medical, and Defendant Medical Pendant.

13. All references to Defendants include acts performed, in concert, or by or through their employees, directors, officers, owners, members, managers, parents, agents, and assigns, acting in their official capacities, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates, and successors.

14. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the Defendants for the purpose of entering and enforcing this Consent Judgment.

15. Defendants stipulate and admit that venue is proper in this Court.

16. Defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Consent Judgment.

ALLEGATIONS BY PLAINTIFF

17. Defendants acted as “telephone solicitors” in Kansas, as that term was defined by K.S.A. 2002 Supp. 50-670(a)(3) and is currently defined by K.S.A. 2014 Supp. 50-670(a)(4).

18. Defendants engaged in “consumer telephone calls” in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-670(a)(1).

19. Defendants contacted Kansas consumers by telephone for the purpose of soliciting the sale of medical devices commonly referred to as “medical pendants.”

20. Defendants, while conducting the aforementioned solicitations in Kansas, engaged in acts and practices in violation of the Kansas No Call Act, K.S.A. 50-670 *et seq.* and the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, which acts and practices include, but are not limited to:

- a. making, or causing to be made, unsolicited consumer telephone calls to Kansas consumers whose telephone numbers are listed on the National Do Not Call Registry, in violation of K.S.A. 2002 Supp. 50-670a(e), K.S.A. 2014 Supp. 50-670a(c), and 16 C.F.R. § 310.4(b)(1)(iii)(B); and
- b. failing to consult the National Do Not Call Registry prior to making unsolicited consumer telephone calls in Kansas, in violation of K.S.A. 2002 Supp. 50-670a(b) and K.S.A. 2014 Supp. 50-670a(a).

21. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendants of a violation of the Kansas No Call Act or any other applicable law or regulation as alleged by Plaintiff, including any allegation referenced above. Notwithstanding, Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purpose of settlement, and in exchange for Plaintiff’s agreement to release all claims against Defendants, as outlined in paragraph thirty-one (31) below.

INJUNCTIVE RELIEF

22. Defendants agree to refrain, and to be permanently enjoined, from making or causing to be made unsolicited consumer telephone calls, as defined by K.S.A. 2015 Supp. 50-670(a)(3), to any Kansas consumer, and Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

23. Defendants agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, including but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

24. Defendants agree to comply with the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, and all federal regulations promulgated thereby, including the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*

25. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division.

26. Defendants shall deliver a copy of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing this Consent Judgment, or within fifteen (15) days after any person assumes such position or responsibilities. Defendants further agree to secure a signed and dated statement acknowledging receipt of this Consent Judgment within seven (7) days of delivery, from all persons receiving a copy of the Consent Judgment pursuant to this paragraph.

27. Defendants shall not cause, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

28. Defendants shall require their independent contractors to comply with the terms set forth in this Consent Judgment.

29. Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

30. Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, and by or through their employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates, and successors.

INVESTIGATIVE FEES AND CIVIL PENALTIES

31. At the time of executing this Consent Judgment, Defendants shall pay to the Office of the Kansas Attorney General ten thousand dollars (\$10,000.00) in investigative fees, pursuant to K.S.A. 50-670(g) and 50-670a(i). Upon receipt of payment in full, Plaintiff agrees to release and discharge Defendants from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under the Kansas No Call Act, K.S.A. 50-670 *et seq.*, or the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, based on Defendants' conduct prior to the date of entry of this Consent Judgment.

32. Payment shall be made in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, marked State v. Benjamin D. George, *et al.*, AG File #CP-13-1012, and mailed to:

Kathryn Carter, #12969
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597

33. Defendants agree to be held jointly and severally liable for the entire amount set forth in paragraph thirty-one (31).

34. Defendants agree that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

COMPLIANCE MONITORING

35. For the purpose of monitoring and investigating compliance with the terms of this Consent Judgment, within ten (10) business days of receipt of written notice from the Attorney General, Defendants shall: 1) submit additional information, including but not limited to written reports, regarding Defendants' solicitation of any Kansas consumer(s) taking place after the entry of this Consent Judgment; 2) answer inquiries regarding Defendants' business partners or independent contractors in those positions after the entry of this Consent Judgment; 3) produce documents created after the entry of this Consent Judgment for inspection and copying, including but not limited to the statements acknowledging receipt of this Consent Judgment required under paragraph twenty-six (26); and 4) make reasonable efforts to provide sworn testimony regarding

matters occurring after the after the entry of this Consent Judgment, if requested by the Attorney General.

36. All notices required under this Consent Judgment shall be marked *Re: State v. Benjamin D. George, et al., AG File No. CP-13-001012* and transmitted to the following address by electronic mail or overnight courier, unless a different address is designated in writing by the Attorney General:

Kathryn Carter, #12969
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
Tel: 785-296-3751
Fax: 785-291-3699
Kate.Carter@ag.ks.gov

37. For purposes of compliance monitoring required by this Consent Judgment, the Attorney General is authorized to communicate directly with Defendants' through legal counsel with the following contact info:

The Rudd Firm P.C.
c/o Jonathan Rudd, Esq.
201 S. Main St., Suite 275
Salt Lake City, Utah 84111
801-676-5337

38. Compliance with this Consent Judgment does not relieve the 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 his jurisdiction, unless such enforcement is pursuant to the Kansas No Call Act, K.S.A. 50-670 *et seq.*, or the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, against conduct prior to the date of entry of this Consent Judgment.

RECORDKEEPING

39. For a period of five (5) years from the date of entry of this Consent Judgment, for any business in which one or more Defendants, individually or in concert with others, are the majority owner(s) or directly or indirectly control the business entity, regarding activities engaged in after the date of this Consent Judgment, Defendants shall create and subsequently maintain the following records:

- a. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- b. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- c. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- d. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- e. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- f. All records and documents necessary to demonstrate full compliance with each provision of this Consent Judgment, including but not limited to, copies of the statements acknowledging receipt of this Consent Judgment required under paragraph twenty-six (26) and all documents submitted to the Attorney General pursuant to the above section titled "Compliance Monitoring."

OTHER PROVISIONS

40. Jurisdiction is retained by this Court for the purpose of enabling Plaintiff and Defendants 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.

41. 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.

42. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendants nor shall Defendants represent the decree as such an approval. The parties further understand that any inaction by the State of Kansas or by the Attorney General 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, subject to paragraph (31).

43. This Consent Judgment represents the entire agreement between Plaintiff and Defendants, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

44. Nothing in this Consent Judgment shall be construed to create, waive or limit any private citizen's right of action.

45. Each of Defendants' representatives signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by that Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of that Defendant. Each Defendant further represents that it has had an

opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

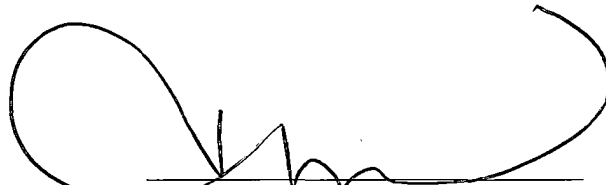
46. This Consent Judgment may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

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 and in favor of Plaintiff in the amount of \$10,000.00.

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

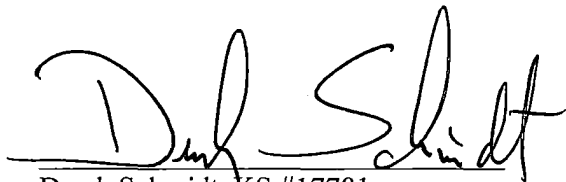
IT IS SO ORDERED.



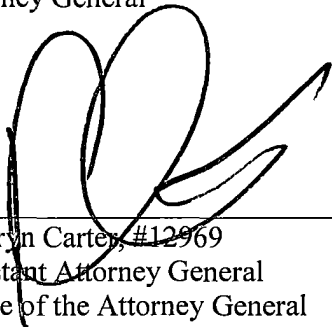
Honorable Teresa L. Watson
District Judge

Prepared and approved by:

PLAINTIFF:

A handwritten signature in black ink, appearing to read "Derek Schmidt". The signature is written in a cursive style with a horizontal line underneath it.

Derek Schmidt, KS #17781
Attorney General

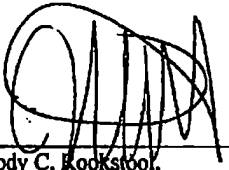
A handwritten signature in black ink, appearing to read "Kathryn Carter". The signature is written in a cursive style with a horizontal line underneath it.

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Attorney for Plaintiff

DEFENDANTS:



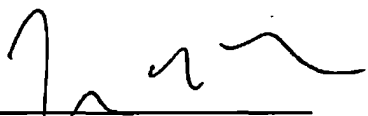
Benjamin D. George,
Managing Member of KPM Capital, LLC
and on behalf of KMR Medical, LLC,
Arizona Medical Supply, LLC d/b/a Western Medical Supply,
and Medical Pendant Billing, LLC d/b/a US Lifecare



Jody C. Rookstool,
Managing Member of KPM Capital, LLC
and on behalf of KMR Medical, LLC,
Arizona Medical Supply, LLC d/b/a Western Medical Supply,
and Medical Pendant Billing, LLC d/b/a US Lifecare



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