

JUL 13 2016 *me*

At 2:04 *p.m.*
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-16-002964

STATE OF TEXAS, Plaintiff	§	IN THE DISTRICT COURT
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
PC CLEANER, INC.; and CASHIER MYRICKS, INDIVIDUALLY, Defendants	§	<u>201st</u> JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, came for hearing the above entitled and numbered cause in which the STATE OF TEXAS (hereinafter "Plaintiff" or "State"), acting by and through Attorney General of Texas, KEN PAXTON, and Defendants PC CLEANER, INC., ("PC Cleaner") and CASHIER MYRICKS ("Myricks"), INDIVIDUALLY, have consented to the entry of this Agreed Final Judgment (the "Judgment"), and jointly move that the Court enter this Judgment:

STIPULATIONS

The Parties agree to the entry of this Judgment and, at their request, THE COURT FINDS AS FOLLOWS:

1. The Office of the Attorney General has asserted certain claims and causes of action under the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE § 17.47 *et. seq.* ("DTPA") in the form of a petition filed on in the above Cause ("Complaint");
2. The State initiated an investigation into the business practices of PC Cleaner and Myricks. PC Cleaner and Myricks both deny that they have done anything wrong and insist that they have not violated any law.
3. This Judgment is a settlement of a disputed matter in order to avoid unnecessary litigation and the expenses associated therewith. Nothing contained herein shall be deemed an admission of liability.



4. The effective date of this Judgment shall be the day it is last signed below by a party hereto (the "Effective Date").
5. The State, PC Cleaner, and Myricks agree to the terms of this Judgment.
6. The corporate signatory hereto is the President of PC Cleaner, Inc. ("PC Cleaner"), who is authorized to enter into this Judgment and Permanent Injunction on behalf of PC Cleaner, has read the Judgment and Permanent Injunction, and agrees to the entry of same;
7. This Judgment in no way affects, preempts, precludes or resolves any matters with respect to any private claimants, or other governmental agencies or departments; and
8. This judgment is non-appealable.

DEFINITIONS

9. For purposes of this Judgment, the following definitions shall apply:
 - A. "Clear and Conspicuous" or "Clearly and Conspicuously" means a disclosure (a) in a written statement or communication, one that is presented in such font, size, color, location, and word choice, and contrast against the background in which it appears, compared to the other matter with which it is presented, so that it is readily understandable, noticeable, and readable, or (b) in an oral statement or communication, one that is presented in such speech and word choice so that it is readily audible, noticeable, and clear. If such statement or communication modifies, explains, or clarifies other information with which it is presented, it must be presented so that it is in close proximity to such other information so that it is

easily noticeable and readily understandable and it must not be obscured in any manner. A statement may not contradict any other information which is presented.¹

- B. "Advertisement" shall mean any attempt, whether a written, oral or electronic statement or illustration, directly or indirectly, to induce the purchase of goods or services, whether the statement appears in an internet search engine result, brochure, newspaper, magazine, free standing insert, circular, mailer, package insert, package label, product instructions, electronic mail, web site, homepage, television, cable television, program length commercial or infomercial or any other medium. This definition applies to other forms of the word "Advertisement" including, but not limited to, "advertise" and "advertising."
- C. "Direct Proximity" means immediately beneath, beside, or adjacent to.
- D. "Express Informed Consent" means an unambiguous assent to be charged for the purchase of a good or service that is given by a consumer after receiving a Clear and Conspicuous disclosure of the nature of the good or service, the price, subscription terms (if any), and the ability to cancel and method of cancellation.
- E. "Defendants" means PC Cleaner and each of its parents, subsidiaries, predecessors, successors, current and former assigns, shareholders, officers, administrators, directors, board of directors, and employees, and Cashier Myricks.
- F. "Economic Interest" shall mean and include any direct or indirect ownership, equity, or security interest of 5% or greater, which interest is held by Myricks or is

¹ The fact that information is presented in a hoverbox or a clickbox that does not display the information unless the cursor covers the relevant term (in the case of a hoverbox) or unless the user clicks on the relevant term (in the case of a clickbox) does not, in and of itself, render that information not Clear and Conspicuous.

held by any corporation, partnership or other entity in which Myricks has an ownership or managerial interest.

PERMANENT INJUNCTION

10. **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendants, and any other person in active concert or participation with Defendants who receive actual notice of this Judgment and Permanent Injunction shall be enjoined from engaging in the following acts or practices in connection with any good or service offered or provided by the Defendants to consumers in Texas:

- A. Misrepresenting, or assisting others in misrepresenting, expressly or by implication, that they have identified problems or other issues on consumers' computers that will affect the performance or security of consumers' computers, including by:
 - 1. Representing that an entry in a computer's registry, a cookie, or an Active X control, is a "threat," "problem," "issue," "error," or "concern" or similar language if such claim is unsubstantiated;
 - 2. Directly or indirectly representing that an entry in a computer's registry, a cookie, or an Active X control is a "threat," "problem," "issue," "error," or "concern" or similar language without accurately describing in a Clear and Conspicuous manner, the effect the type of entry in a computer's registry, cookie, or Active X control is likely to have on the computer's security or performance.
 - 3. Directly or indirectly representing the classification or category of scanned items without accurately describing in a Clear and Conspicuous manner that classification or category.

4. Representing the "Threat Level" or "Concern Level" or similar language of scanned items if such claim is unsubstantiated;
 5. Misrepresenting a consumer's computer's performance through the use of an image or textual warning;
- B. Misrepresenting, including through unsubstantiated representations, the effectiveness of any software offered for sale;
 - C. Including terms in an End User License Agreement that contradict any claims Defendants make, directly or indirectly, about Defendants' goods or services or which otherwise affirmatively disclaim effectiveness of the good or service offered for sale;
 - D. Representing goods or services are free when they are not, including representing directly or indirectly that goods or services include free technical support service if free service is not included in the software purchase price;
 - E. Contracting with or hiring a company to provide third-party customer support, product support, technical support, or sales without:
 1. Requesting for review all scripts or guidelines the company will provide to customer service representatives (if any) and reviewing any such provided scripts for compliance with the terms of this agreement.
 2. Monitoring or auditing calls to the company, or hiring a third-party monitor or auditor to do so, on a systematic, regular, and frequent basis to monitor for compliance with the Permanent Injunction terms incorporated into the company's contract or agreement, including making and reviewing recordings of calls for compliance monitoring; and

3. Taking appropriate enforcement action, including termination of the relationship, to ensure that the company complies with the terms of the Permanent Injunction portion of this agreement incorporated into its agreement or contract with Defendants.
 4. Displaying, in Direct Proximity to any of the third-party company's contact information on Defendants' website, the name of such third party; and the fact, if true, that such third party may try to offer for sale or sell goods or services.
- F. Selling any good or service without obtaining Express Informed Consent for such good or service, including any auto-renewal feature.
- G. Representing that PC Cleaner has an affiliation with, approval or certification by Microsoft, ICSA Labs, the BBB, West Coast Labs, or any other organization unless either (1) such affiliation, approval or certification is accurate and current or (2) such affiliation, approval or certification is accurate and bears the date(s) during which it was valid.

11. **IT IS FURTHER ORDERED** that Defendants shall create and retain, and annually for at least three (3) years from the effective date of this Judgment, provide to the State, the following records:

- A. Every fictitious or assumed business name Myricks is registered under or under which Myricks engages in business in Texas;
- B. Every entity in which Myricks participates as an owner, partner, investor, officer, member, managing member, or managing partner, other than a publicly traded company;

- C. Every entity in which Myricks has an Economic Interest that does business in Texas;
- D. The name and identification information for any third party with which Defendants contract to provide third-party customer support, product support, technical support, or sales. For each such third party that performs services for a fee to the consumer or offers to sell additional goods or services to the consumer, all scripts or guidelines given to customer service representatives and calls recorded pursuant to Para. 10E.2. originating from Defendants' consumers to such third party.

12. IT IS FURTHER ORDERED that the State, in order to ensure compliance with the terms of this Judgment, shall be permitted to conduct undercover telephone calls to Defendants (excluding Cashier Myricks's home and mobile telephone numbers) and to make undercover purchases of services offered by Defendants. Any amounts charged as part of these compliance checks shall be cancelled and refunded upon request to Defendants by the State.

PAYMENT TO THE STATE

13. Defendants are ordered to pay Plaintiff the sum of \$20,000.² \$10,000 of this sum shall be allocated for reimbursement of attorneys' fees to the Texas Attorney General, which fees were incurred on behalf of the Plaintiff and do not constitute an antecedent debt with respect to this

² The parties acknowledge that PC Cleaner, Inc. and Cashier Myricks have entered into a settlement in the case styled *Federal Trade Commission and State of Florida v. Inbound Call Experts, LLC, et al.*, Case No. 14-81395-CIV-Marra/Matthewman (S.D. Fla.). The Plaintiffs in that action have taken judgment against PC Cleaner, Inc. and Cashier Myricks for \$29,539,628.11, all but \$258,000 of which has been suspended. That suspension will only be lifted as to a defendant if, upon proper motion of Plaintiffs in that matter, the Court determines that the defendant materially misled Plaintiffs in that action regarding the truthfulness, accuracy, and completeness of his or its sworn financial statements, related documents, and related information.

litigation. \$10,000 of this sum shall be allocated for civil penalties pursuant to the DTPA §17.47 et seq. Such payment must be made within seven (7) days of entry of this Judgment.

14. In consideration for this Judgment, the Office of the Texas Attorney General hereby releases Defendants from all claims under the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE § 17.47 et seq., as well as claims under any other Texas consumer protection laws, related to or arising out of the marketing and sale of PC Cleaner software in Texas from the beginning of time until the Effective Date of this Judgment.

MISCELLANEOUS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

15. The State of Texas shall have all writs of execution and other process necessary to enforce this Agreed Final Judgment. Defendants, by their signatures and the signatures of their authorized representatives below, hereby acknowledge notice and acceptance of same; therefore, no writ need be issued.

16. This Judgment represents the entire agreement between the parties and shall be binding upon Defendants and all heirs, agents and successors of the parties. This Judgment represents a binding agreement with the State of Texas. If PC Cleaner merges with any other business entity or sells, assigns, or otherwise transfers substantially all of its assets, PC Cleaner shall provide reasonable prior notice to the surviving corporation or the purchaser, assignee, or transferee of this Judgment and its binding effect upon the surviving corporation, purchaser, assignee, or transferee to the extent such terms applies to such party's business.

17. Unless otherwise specified in this Judgment, and subject to the Court's entering of this Judgment, the terms and conditions set forth in this Judgment shall be deemed in effect from the day all parties have executed it below, indicating their agreement to its form and substance. To the extent that the provisions of this Judgment conflict with any Texas, local, or federal law as they

now exist or are later enacted or amended, such law and not this Judgment shall apply only to the extent such conflict exists. For the purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required by such Texas, local, or federal law, or if conduct required by this Judgment is prohibited by such Texas, local, or federal law.

18. To seek a modification of this Judgment for any reason, Defendants shall send a written request for modification to the State. The State shall give such petition reasonable consideration, and shall meet and confer with Defendants upon request at a reasonably agreed upon location and date (or telephonically, if requested by Defendants), and shall respond to Defendants with an acceptance or denial of such request, or a request for additional information, within a reasonable time period not to exceed thirty (30) business days from receipt of the request. If a request to modify is denied by the State, Defendants reserve all rights to pursue any legal or equitable remedies that may be available to them.

19. As consideration for the relief agreed to herein, if the State determines that Defendants have failed to comply with any of the terms of this Judgment, and if in the State's sole discretion the failure to comply does not threaten the health or safety of the citizens of the State and/or does not create an emergency requiring immediate action, the State will notify Defendants in writing of such failure to comply and Defendants shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the State's determination. The response shall include an affidavit containing, at a minimum, either: (a) A statement explaining why Defendants believe they are in full compliance with the Judgment; or (b) A detailed explanation of how the alleged violation(s) occurred; and (i) A statement that the alleged breach has been addressed and how; or (ii) A statement that the alleged breach cannot be reasonably addressed within ten (10) business days from receipt of the notice, but (1) Defendants have begun to take corrective action to address the alleged breach; (2) Defendants are pursuing such corrective action

with reasonable and due diligence; and (3) Defendants have provided the State with a detailed and reasonable time table for addressing the alleged violation(s).

20. Defendants shall not represent to the public that this Judgment constitutes approval by the State or this Court of any of Defendants' actions or business activities.

21. No action taken as required by an Order of the Federal Trade Commission or any court shall constitute a violation of this Judgment.

22. The parties hereto agree that this is a compromise of a disputed claim and that this Judgment is entered into without admitting any liability, which liability is expressly denied, and without agreement by any party to any of the allegations or defenses made by another party. Nothing contained herein shall be deemed an admission of liability or wrongdoing of any kind.

23. The parties represent and warrant, each to the other, that each has the authority to enter into and make this Judgment, and to bind themselves to this Judgment. The parties agree that nothing in this Judgment shall create, waive, or limit any private rights, causes of action, or remedies of any other individual or entity against any party hereto.

24. All notices required under this Judgment shall be sent as follows:

To PC Cleaner, Inc.: 240 Newport Center Drive #6, Newport Beach, CA 92660, with a copy to William Edmonson, Doll Amir & Eley LLP, 1888 Century Park East, Suite 1850, Los Angeles, CA 90067.

To Cashier Myricks: 17 Via Palladio, Newport Coast, CA 92657, with a copy to William Edmonson, Doll Amir & Eley LLP, 1888 Century Park East, Suite 1850, Los Angeles, CA 90067.

To the State of Texas or the Attorney General:

Elizabeth Chun
Assistant Attorney General
Office of the Texas Attorney General
Consumer Protection Division
P.O. Box 12548

Austin, TX 78711

25. This Judgment may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same Judgment.

26. True and correct copies of signatures by any of the parties hereto are as effective as original signatures.

AGREED AS TO SUBSTANCE AND FORM:

KEN PAXTON
Attorney General of Texas


CASHIER MYRICKS

JEFFREY C. MATEER
First Assistant Attorney General


PC CLEANER, INC

BRANTLEY STARR
Deputy First Assistant Attorney General

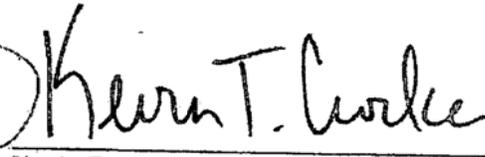
JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

DAVID A. TALBOT
Chief, Consumer Protection Division

AGREED AS TO FORM ONLY:


ELIZABETH BOLEN CHUN

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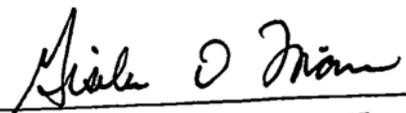

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**ATTORNEYS FOR PC CLEANER, INC.
AND CASHIER MYRICKS**

**ATTORNEYS FOR
THE STATE OF TEXAS**

Signed on: July 13, 2016

X 
Presiding Judge

SIGNED this _____ day of _____, 2016.

PRESIDING JUDGE