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GILBERT SANCHEZ
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IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
205TH JUDICIAL DISTRICT

2008 MAY 7 AM 10 45

THE STATE OF TEXAS,

Plaintiff,

v.

CNG FINANCIAL CORPORATION,
CHECK 'N GO OF TEXAS, INC., and
SOUTHWESTERN & PACIFIC
SPECIALTY FINANCE, INC.,

Defendants.

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EL PASO COUNTY, TEXAS

BY _____

DEPUTY

CAUSE NO. 2007-2248

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

1. On this the 7th day of May, 2008, came before this court the STATE OF TEXAS, Plaintiff, and Defendants CNG FINANCIAL CORPORATION, CHECK 'N GO OF TEXAS, INC., and SOUTHWESTERN & PACIFIC SPECIALTY FINANCE, INC., ("Southwestern"), in the above entitled and numbered cause. The STATE OF TEXAS, by and through Texas Attorney General GREG ABBOTT, and Defendants, by and through their attorney of record, announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled and presented to the Court this Agreed Final Judgment and Permanent Injunction ("Judgment"). By their duly authorized signatures, the parties stipulated to the Court the following: that they understand the terms of this Judgment; that they agree to the terms of this Judgment; that they have waived all rights of appeal from this Judgment; that they actively participated in the negotiations leading up to this Judgment and are aware of the duties placed upon them by it and are desirous and capable of carrying out those duties in full; that they acknowledge receipt of copies of this Judgment and have full and actual notice of the terms of this Judgment; that the issuance and service of writ of injunction are waived; that the terms of this Judgment are sufficiently detailed and specific to be enforceable by the Court in

conformance with TEX.R.CIV.P., 683; that this Judgment represents a compromise and settlement of all matters arising out of facts alleged by the STATE OF TEXAS in this cause.

2. Defendants CNG FINANCIAL CORPORATION and CHECK 'N GO OF TEXAS, INC. attest that they are not conducting business in the State of Texas. More specifically, they represent that CNG FINANCIAL CORPORATION has no employees and that CHECK 'N GO OF TEXAS, INC. is a "legacy subsidiary" and its operations are within the sole control and authority of Defendant SOUTHWESTERN & PACIFIC SPECIALTY FINANCE, INC whose assumed name is Check 'n Go. Based upon such attestation, the STATE OF TEXAS hereby asks the court to nonsuit Plaintiff's claims against Defendants CNG FINANCIAL CORPORATION and CHECK 'N GO OF TEXAS, INC.

3. Southwestern denies the allegations of the Office of the Attorney General, and the parties agree and stipulate that neither this Judgment nor the payment of money by Southwestern constitutes an admission by Southwestern of any violation of the Identity Theft Enforcement and Protection Act, the DTPA, or any other law. Southwestern further alleges that it has reasonable written policies and procedures and training regarding the safe storage and destruction of Personal Identifying Information and Sensitive Personal Information ("PII" and "SPI," respectively, as defined herein, below)

4. Pursuant to the agreement, the parties submit to the jurisdiction of the Court and do not contest the entry of this Judgment.

5. It appearing to the Court that all parties agreed to the entry of this Judgment and that they have approved its entry by their duly authorized signatures and the signature of their respective attorneys below, the Court, upon the stipulations of the parties after being fully advised in this matter, finds as follows:

- a. That it has jurisdiction of the parties and subject matter of this suit;
- b. That the settlement of this dispute is fair, reasonable, and just; and

c. That it would be in the best interests of the parties if the Court approved the settlement and rendered Judgment accordingly.

6. Based on these findings, and having heard and considered the representations made by the parties, the Court is of the opinion that a permanent injunction should be issued as granted in this Judgment and that plaintiff STATE OF TEXAS is entitled to recover of and from Southwestern as set forth below.

DEFINITIONS

7. For purposes of this Judgment, these words are defined as follows:

a. **“Employees”** means employees of Southwestern that work in any of Southwestern’s stores in Texas or who have oversight or managerial responsibility over employees or stores in Texas.

b. **“Personal Identifying Information”** (“PII”) means information that alone or in conjunction with other information identifies an individual, including an individual’s:

- (1) name, social security number, date of birth, or government-issued identification number;
- (2) mother’s maiden name;
- (3) unique biometric data, including the individual’s fingerprint, voice print, or retina or iris image;
- (4) unique electronic identification number, address, or routing code; and
- (5) telecommunication access device.

c. **“Sensitive Personal Information”** (“SPI”):

- (1) means an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

- (A) social security number;
 - (B) driver's license number or government-issued identification number;
 - or
 - (C) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; and
- (2) does not include publicly available information that is lawfully made available to the general public from the federal government or a state or local government.
- d. **"Stores"** refers to Check 'n Go locations in Texas owned or operated by Southwestern;
 - e. **"State privacy protection laws"** include but are not limited to TEX. BUS. & COM. CODE ANN. § 35.48 (hereinafter "Section 35.48") and Chapter 48 of the TEX. BUS. & COM. CODE ANN. § 48.001, *et seq* (titled "Identity Theft Enforcement and Protection Act").

INJUNCTIVE RELIEF

8. IT IS THEREFORE, ORDERED that Southwestern, its officers, agents, servants, Employees and any other person under or subject to the control of Southwestern, acting in concert or participation with Southwestern are hereby enjoined from disposing of records that contain PII or SPI unless:
- a. Southwestern modifies the PII or SPI by shredding or erasing or otherwise rendering it unreadable or undecipherable;
 - b. Southwestern destroys records containing PII or SPI; or

- c. Southwestern arranges for the destruction of records containing PII or SPI by contracting with a business that is engaged in the disposal of confidential business records.

INFORMATION SECURITY AND SAFE DISPOSAL PROGRAM

9. IT IS FURTHER ORDERED that Southwestern shall adopt, implement and maintain a comprehensive Information Security and Safe Disposal Program ("Program") for its operations to protect and safeguard from unlawful use, disposal, or disclosure any PII or SPI, whether in electronic form or hard copy, which is collected, maintained or accessible by its Stores in the regular course of business. The Program shall include the following:

a. Corporate Level Compliance Officer

Southwestern shall designate a corporate level compliance officer who shall be responsible for compliance with the Program and overseeing compliance with the terms of this Judgment and State Privacy Protection Laws. The Compliance Officer's duties shall include oversight of the following:

- (1) A fraud and ethics hotline to whom Southwestern's Employees can
- (2) Responding to questions from Employees regarding compliance with this Judgment, the Program, or state privacy protection laws.

b. Contents

The Program will be fully documented in writing, available online to Employees, and shall contain administrative, technical, and physical safeguards appropriate to Southwestern's operations and activities and the sensitivity of the information collected from or about consumers.

c. Record Destruction

When disposing of records which contain PII or SPI, Southwestern will deposit all documents containing PII or SPI into locked containers dedicated to the purpose of

shredding (herein referred to as "Secure Document Containers") to be located behind the counter in Southwestern's stores and not accessible by the public, until such documents can be picked up for shredding by a third party disposal company. The third party disposal company shall provide certification to Southwestern that all documents have been shredded, erased, or otherwise rendered unreadable or undecipherable. Southwestern shall maintain records identifying the specific third party disposal company which services each of its Texas stores and shall further maintain in its records the required certifications.

d. Notice To Management Required

Southwestern shall inform each Texas Regional Vice President, District Director of Operations and Store manager that they are required to monitor Employee and store compliance with the Program, that their compliance with the Program and their stores' compliance will be taken into account in connection with compensation and promotion decisions, and that failure to comply with the Program and privacy laws may constitute grounds for termination.

e. Employee Training

Southwestern shall provide all its Employees with training regarding its Program and state privacy protection laws. All current Employees shall take the training within 90 days of the entry of this Judgment. New Employees hired after the initial implementation of this training shall complete the training within 30 days of the date they begin work. Southwestern shall provide all its Employees with periodic "refresher" training at least annually to ensure that Employees maintain the requisite knowledge and motivation regarding compliance with the Program and state privacy protection laws. The training - which may be conducted online- shall include, but not be limited to the following elements:

- (1) A review of Southwestern's policies and Program relating to protection and disposal of PII and SPI;
- (2) The fact that compliance with the Program will be taken into account in connection with compensation, promotion, and retention decisions;
- (3) An explanation of the identity theft related reasons why it is important to abide by the Program;
- (4) A review of the laws applicable to the proper safeguarding and disposal of PII and SPI; and
- (5) The name, telephone number, and email address of the corporate level person to whom Employees can anonymously report failures to comply with or concerns regarding compliance with the Program or compliance with the Order or state privacy protection laws and to whom Employees can direct questions regarding compliance with the Program, this Order or state privacy protection laws.

f. Written or electronic test regarding the Program

All Store managers and Employees who have access to, review, handle, store, or dispose of PII or SPI must take a written or electronic test to establish that the Employee has fully acquired the knowledge needed to assure compliance with the applicable laws and Southwestern's policies relating to the proper safeguarding and disposal of such information. Southwestern shall provide supplemental training to ensure that any gaps in knowledge identified by such training are addressed. This test will cover specific information regarding disposal practices to be used at the specific store for which the manager or Employee has responsibility. Southwestern shall retain current test completion records in its files.

g. Documentation of training

Southwestern shall require that each Employee, upon completion of such training, sign an acknowledgement that he or she has read and understands the information provided. These acknowledgements shall be maintained by Southwestern. For a period of two years after entry of this Judgment, Southwestern shall on the anniversary date of the entry of this Judgment forward to the Office of Attorney General a sworn statement signed by the Compliance Officer certifying that all of Southwestern's Employees have completed the above described training regarding the Program.

COMPLIANCE CHECKS

10. Southwestern agrees that at least once every six months it will conduct a visit to each of its Stores to evaluate compliance with the Program. Southwestern will not inform the managers or Employees of the store in advance, directly or indirectly, of the date when a particular store will be the subject of a compliance visit. In the event that the compliance visit reflects that the store is not complying with any component of the Program, Southwestern agrees it will document the violations, take any necessary corrective action as soon as is practically possible and document any such corrective action taken. Any store which is found to be out of compliance will be the subject of monthly unannounced compliance visits until it is found to be in compliance for three consecutive months.

POSTED NOTICE REQUIRED

11. Southwestern shall post and maintain signs in each of its Texas stores clearly and conspicuously disclosing to all Employees that they are prohibited from disposing of or throwing away documents which contain PII or SPI into any container other than the Secure Documents Container.

EFFECTIVE DATE

12. The Program shall be implemented within sixty days of the entry of this Judgment. Southwestern shall provide a copy of that Program to the Attorney General and for a period of two years from the date of entry of this Judgment, will if requested by the Attorney General provide copies of any changes or modifications to such policies within seven days of its receipt of such request.

CONFLICT WITH LAWS

13. To the extent that the provisions of this Judgment conflict with any Texas, local or federal law or regulation which now exists, or is later enacted or amended, such law and not this Judgment shall apply where such conflict exists. For the purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required or permitted by such Texas, local, or federal law or regulation, or if conduct required by this Judgment is prohibited by such Texas, local or federal law or regulation. In the event that Southwestern believes that any such conflict exists, Southwestern shall provide the Office of the Attorney General with written notice explaining that such conflict exists and proposing a modification to this Judgment. Such notice shall be provided by Southwestern prior to implementation of any changes to the Program.

MONETARY PAYMENT

14. Within thirty (30) days of the entry of this Agreed Final Judgment and Permanent Injunction, Southwestern agrees to pay to the State of Texas the sum of \$275,000, which includes \$55,000 in full payment of all attorney's fees in this matter. The remainder \$220,000 shall be deposited in the general revenue fund and as provided by TEX. BUS. & COM. CODE ANN. § 48.201, may be appropriated only for the investigation and prosecution of cases under the Identity Theft Enforcement and Protection Act.

15. Such payment shall be made in the form of a certified check or wire transfer made payable to the Office of the Attorney General of Texas, bearing the Attorney General Number

072449143, and shall be delivered to the Office of the Attorney General, Consumer Protection and Public Health Division, 300 West 15th Street, 9th Floor Austin, Texas, 78711- Attention: Janie Salazar.

MISCELLANEOUS

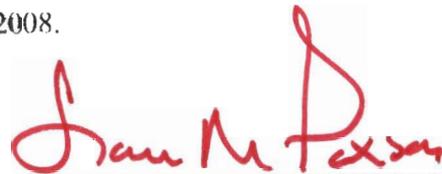
16. The Court hereby grants Plaintiff's motion for nonsuit as against Defendants CNG FINANCIAL CORPORATION and CHECK 'N GO OF TEXAS, INC., and dismisses Plaintiff's claims against said Defendants.

17. All costs of court expended or incurred in this cause are adjudged against Southwestern.

18. After signing by the Court, this agreement constitutes final judgment.

19. All relief not expressly granted herein is denied.

SIGNED on the 7th day of May, 2008.



JUDGE PRESIDING

SIGNATURES ARE ON THE FOLLOWING PAGE

SAM M PAXSON
Senior District Judge
Presiding

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

SOUTHWESTERN & PACIFIC
SPECIALTY FINANCE INC.

By: 
Title: Secretary

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

APPROVED AS TO FORM:



Richard E. Kammer
Associate General Counsel
The 409 Group, Inc
5155 Financial Way
Mason, OH 45040
(513) 229-6536
Fax (513) 573-4680
Ohio State Bar No. 0043946
Counsel for Southwestern

PAUL D. CARMONA
Assistant Attorney General
Chief, Consumer Protection and Public
Health Division


JAMES A. DAROSS
Assistant Attorney General
Consumer Protection and Public Health
Division
401 E. Franklin Ave., Suite 530
El Paso, Texas 79901
(915) 834-5801
FAX (915) 542-1546
State Bar No. 05391500

D. ESTHER CHAVEZ
C. BRAD SCHUELKE
Assistant Attorney General
Consumer Protection and Public Health
Division
300 West 15th Street, 9th Floor
Austin, Texas 78711
(512) 475 4628
(512) 473 8301 (Facsimile)
State Bar No. 04162200
State Bar No. 24008000

FOR THE STATE OF TEXAS: