

DEC 18 2008 TE

NO. D-1-GV-08-002832 At 8:54 A M.  
Amalia Rodriguez-Mendoza, Clerk

STATE OF TEXAS,  
Plaintiff,

v.

THOMAS S. CARMICHAEL  
D/B/A DISCOUNT CONSTRUCTION,  
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261<sup>ST</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter "State"), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and THOMAS S. CARMICHAEL D/B/A DISCOUNT CONSTRUCTION, is Defendant. Through their respective attorneys of record, Plaintiff and Defendant agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

**I. STIPULATED FACTS**

The parties, through their respective attorneys, make the following stipulations:

1. Texas has filed its petition pursuant the Texas Telemarketing Disclosure and Privacy Act, TEX. BUS. & COM. CODE § 44.001 *et seq.* (Vernon Supp. 2008) ("TTDPA").
2. The parties have compromised and settled the State's claim for civil penalties, investigative costs, attorneys' fees, and court costs.
3. The Office of the Attorney General and Defendant agree to and do not contest the entry of this Agreed Final Judgment and Permanent Injunction;
4. Defendant does not contest jurisdiction or venue in this case;
5. Defendant has waived issuance of a writ of injunction and has waived the

requirements of Texas Rules of Civil Procedure 687-692;

6. The person signing this judgment on behalf of Defendant is authorized to do so and has read the Agreed Final Judgment and Permanent Injunction and agrees to entry of same on behalf of Defendant; and
7. This Agreed Final Judgment and Permanent Injunction in no way affects any individual's right of action.

The Court has read the most recent pleadings and stipulations of the parties, and it appears to the Court that all parties agree to the entry of this judgment and that they have approved its entry as indicated by the signatures of the parties and their attorneys below:

## **II. DEFINITIONS**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that as used in this Judgment, the following definitions shall apply:

1. "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by § 4, The Securities Act, TEX. CIV. STAT. ANN. ART. 581-4, § A (Vernon 2003 and Supp. 2008).
2. "Effective date" means the date on which this Agreed Final Judgment and Permanent Injunction is entered by the Court.
3. "Express invitation or permission" means consent which is affirmatively stated in direct terms, definitely and explicitly, and not left to inference or implication.
4. "Telemarketing call" means an unsolicited telephone call made to (1) solicit a sale of a consumer good or service; (2) solicit an extension of credit for a consumer good or

service; or (3) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale. The term "telemarketing call" includes an unsolicited telephone call made to encourage or induce the recipient to attend a face-to-face meeting or otherwise receive a future solicitation for the sale of a consumer good or service or an extension of credit for a consumer good or service.

5. "Texas no-call list" means the database of telephone numbers of consumers in the State of Texas who object to receiving unsolicited telemarketing calls which is maintained by the Public Utility Commission of Texas (or its agent) pursuant to § 44.101 of the TTDPA.
6. "Unsolicited telephone call" means a telephone call that is transmitted to any person without that person's prior express invitation or permission.

### **III. INJUNCTIVE RELIEF**

#### **A. Prohibitive Orders**

**IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant, and his agents, servants, employees and any other persons or entities in active concert or participation with Defendant, shall be permanently enjoined from:

1. Making or causing to be made any telemarketing call to a telephone number in the State of Texas until after such time that the current Texas no-call list has been purchased and downloaded; and
2. Making or causing to be made a telemarketing call to any telephone number that has been published on the then-current Texas no-call list more than sixty (60) days unless such call would be exempted from the application of the TTDPA pursuant to §

44.003(b);

3. Making or causing to be made a telemarketing call to a person in the State of Texas that has expressed his or her desire, either directly to Defendant or through the inclusion of such person's telephone number on a legally binding no call list (including any list maintained by a federal governmental agency), not to receive such telemarketing calls; and
4. Failing to provide Defendant's true name, address, and telephone number to any consumer, consumer protection agency or organization, or law enforcement agency that asks for such information, including but not limited to the Texas Attorney General's Office and the Public Utility Commission.

#### **B. Mandatory Orders**

**IT IS FURTHER ORDERED** that Defendant shall:

1. Immediately adopt and implement written procedures that are reasonably calculated to insure compliance with all legally binding no call laws, including but not limited to the TTDPA and effectively prevent telemarketing calls that are in violation of such laws, including taking corrective action when appropriate;
2. Provide a copy of the written procedures Defendant adopts pursuant to the preceding paragraph to any third party telemarketing agency with whom Defendant does business and require such third party telemarketing agency to comply with the no call laws and such procedures;
3. Provide a copy of the written procedures Defendant adopts pursuant to paragraph 1 above to the Texas Attorney General's Office no later than thirty (30) days after the

effective date of the Judgment by mailing same to the undersigned attorney;

4. Provide a copy of the written procedures Defendant adopts pursuant to paragraph 1 above to all current and future employees of Defendant who conduct telemarketing calls in Texas or who have any supervisory capacity over any employee who conducts telemarketing calls in Texas;
5. Institute a training program for all employees who conduct telemarketing calls in Texas in which employees will receive instruction in customer relations, etiquette, and compliance with all legally binding no call laws, including but not limited to the TTDDPA, and the written procedures Defendant adopts pursuant to paragraph 1 above;
6. Not represent, directly or by implication, that this Court or the Attorney General has approved any of Defendant's business practices;
7. Not form, organize, or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purposes of avoiding compliance with the terms of this Agreed Final Judgment and Permanent Injunction.

#### **IV. ATTORNEYS' FEES AND CIVIL PENALTIES**

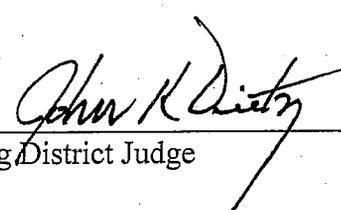
**IT IS FURTHER ORDERED** that Defendant shall pay to the State of Texas civil penalties in the sum of Five Thousand Dollars and No/100 Dollars (\$5,000.00) and the sum of Ten Thousand Dollars and No/100 dollars (\$10,000.00) for reimbursement of investigative costs and attorneys' fees. This Judgment amount shall be paid according to the following schedule: The Defendant shall pay \$10,000.00 of the Judgment amount no later than December 5, 2008. In addition, by no later than the fifth day of each month from February 2009 through June 2009, the Defendant will make a \$1,000.00 monthly payment to the State. The payments due by Defendant pursuant to this Judgment

shall be paid to the State by cashier's check and shall be made out to the Office of the Attorney General of Texas. The checks shall bear Attorney General No. 06-2409669 on them and shall be hand-delivered to the Office of the Attorney General, Consumer Protection Division, 300 W. 15<sup>th</sup> St., 9<sup>th</sup> Floor, Austin, Texas 78701 (Attn: Pedro Perez, Jr.) or mailed to the following address: Pedro Perez, Jr, Assistant Attorney General, Consumer Protection Division, P.O. Box 12548, Austin, Texas 78711-2548.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant be assessed all costs herein.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all relief not granted herein is hereby denied.

SIGNED AND ENTERED this 18<sup>th</sup> day of December, 2008.

  
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Presiding District Judge

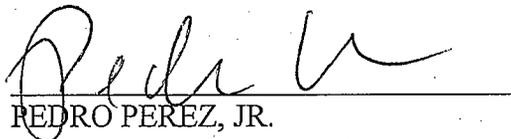
**Approved as to Form and Substance and Entry Requested:**

GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

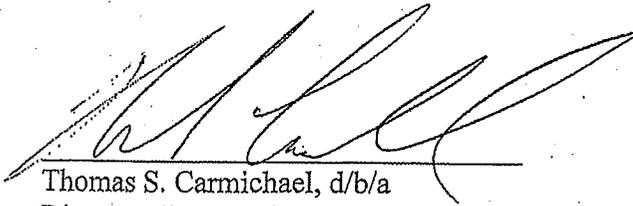
JEFF ROSE  
Deputy First Attorney General for Litigation

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

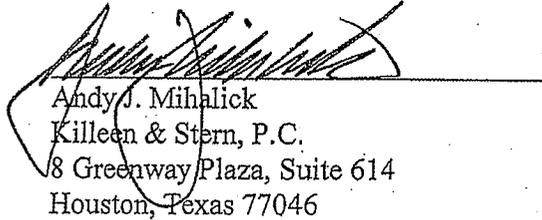


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Discount Construction, Inc.,



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**Attorneys for Defendant**