

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
THE SAT AND ACT PREP CENTER,	§	
INC., JOHN JOSEPH STUART,	§	101 <sup>st</sup> -B JUDICIAL DISTRICT
individually, FRANCES STUART,	§	
individually, and THE STUDENT	§	
RESOURCE CENTER, LLC.,	§	
Defendants.	§	

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, the State of Texas, acting by and through Attorney General Greg Abbott, and Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC have consented to the entry of this Agreed Final Judgment and Permanent Injunction and jointly move that the Court enter this Agreed Final Judgment and Permanent Injunction.

The Court, after considering the agreement of the parties and the pleadings, is of the opinion that the said agreement should be and hereby in all things approved, and accordingly, that this Agreed Final Judgment and Permanent Injunction should be and is hereby entered.

**1. STIPULATIONS**

1.1 Plaintiff and Defendants stipulate to the amount of the monetary judgments specified herein.

1.2 Plaintiff and Defendants stipulate that Defendants’ indebtedness to the State of Texas for civil penalties is non-dischargeable pursuant to 11 U.S.C § 523(a)(7).

1.3 Defendants waive the issuance and service of a writ of injunction and acknowledge by the signatures below that Defendants have received notice and receipt of this

injunction.

1.4 The parties stipulate that if Plaintiff has reason to believe that Defendants have failed to comply with the terms of this judgment, Plaintiff shall notify Defendants in writing prior to instituting any court action to enforce the judgment or collect any abated judgment amounts. Such notice shall be sent to Defendants' addresses as stated in this judgment. Defendants shall have thirty (30) business days from receipt of such notice to provide a good faith written response to the Plaintiff's notification and to cure the alleged violation before Plaintiff pursues any enforcement action. Defendant's response shall include a detailed explanation of how the alleged violation occurred and a description of the action taken by Defendant to resolve the violation.

1.5 The parties agree that Defendants, by entering into this Agreed Final Judgment and Permanent Injunction, do not admit any of the allegations made against them by Plaintiff.

## **2. DEFINITIONS**

2.1 Negative Option Feature, continuity plan or membership means, in an offer or agreement to sell or provide any goods or services, a provision under which the consumer's silence or failure to take an affirmative action to reject the goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

2.2 "Representing" and "misrepresenting" include representing and misrepresenting expressly or by implication.

## **3. INJUNCTIVE RELIEF**

3.1 IT IS THEREFORE ORDERED THAT Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC, and Defendants' officers, agents, servants, employees, and all

persons in active concert or participation with Defendants who receive actual notice of this order by service or otherwise, shall be permanently prohibited from the following acts and practices:

- A. Making deceptive, misleading, and/or false claims regarding the benefits of accessing Defendants' online scholarship information.
- B. Misrepresenting the accessibility to Defendants' scholarship information.
- C. Misrepresenting the cost to access Defendants' scholarship information.
- D. Misrepresenting that Defendants or Defendants' agents represent or work for a child's school. This includes representing themselves as being from a "counseling office" affiliated with a school.
- E. Misrepresenting that a child has expressed interest in Defendants' services or materials.
- F. Failing to disclose that the test preparation materials being offered include products by Kaplan, when and if the products include products developed by, licensed by, or distributed by Kaplan.
- G. Advertising test preparation materials without the intent to sell the materials as advertised.
- H. Misrepresenting the requirements or conditions upon which a consumer may receive a refund.
- I. Failing to honor any representations made by Defendants regarding refunds.
- J. Failing to issue a refund or chargeback to a consumer when a product is not available or is not shipped to a consumer within the represented time period.
- K. Failing to provide refunds to consumers when the products to consumers are not delivered.

- L. Charging for products not delivered to consumers.
- M. Failing to honor a consumer's cancellation request, when such request is consistent with previously disclosed policies and procedures.
- N. Representing to consumers that a consumer's child indicated to the child's counselor or counseling office that the child was interested in Defendants' products.
- O. Representing that Defendants' obtained a consumer's or a consumer's child's information from a school, a counselor or counseling office.
- P. Misrepresenting the qualifications of employees or telemarketers working on behalf of Defendants.
- Q. Representing that employees or telemarketers working on behalf of Defendants are "certified SAT counselors," "certified ACT counselors," "certified PSAT counselors," or that they hold any other certification unless such certification is true and such certification was received from an organization unaffiliated with Defendants or Defendants' businesses.
- R. Representing that employees or telemarketers working on behalf of Defendants are teachers, former teachers, or educators unless such representations are true.
- S. Representing that employees or telemarketers working on behalf of Defendants are "education counselors" unless the person has actual education counseling experience outside of selling or marketing educational or test preparation materials.
- T. Misrepresenting a Defendant's involvement in the development of any test preparation materials.

- U. Misrepresenting that a child ordered test preparation materials.
- V. Representing any affiliation with Kaplan, except for any disclosure that may be required pursuant to paragraph 3.1F of this judgment.
- W. Failing to provide a valid telephone number for consumers to contact customer service which is answered by customer service representatives of Defendants during the hours of 10:00am to 5pm (Central Standard Time) Monday through Friday, excluding holidays.
- X. Misrepresenting the quantity of materials available.
- Y. Failing to disclose to consumers if the products they order or want to order are not immediately available or if the products are back-ordered.
- Z. Misrepresenting the amount of time expected for delivery of an ordered product.
- AA. Requiring a consumer to return an unopened product in packaging which is different than the product's original packaging. This includes mailing a product in an envelope and then requiring a consumer to return the product in a box.
- BB. Representing that a defendant has been in contact with a child's school or counselor regarding test prep materials.
- CC. Misrepresenting the availability of products or services.
- DD. Failing to provide access to online scholarship information as promised to consumers.
- EE. Failing to disclose refund, return, and cancellation policies and procedures to consumer prior to charging the consumer for any products or services.
- FF. Failing to disclose, truthfully and in a clear and conspicuous manner, before obtaining a consumer's express authorization to bill or charge the consumer for

any goods or services, all material terms and conditions for the purchase of any such goods or services, including but not limited to:

(1) All material restrictions, limitations, or conditions to purchase, receive or use the goods or services that are the subject of the sales offer.

(2) All policies regarding refunds, guarantees, cancellations, exchanges and repurchases, including any policies that refunds when refunds will not be made or that cancellations or exchanges will not be accepted.

(3) If the offer includes a Negative Option Feature or Membership, all material terms and conditions of the Negative Option Feature or Membership, including but not limited to: the fact that the consumer's account will be automatically charged unless the consumer takes affirmative action to avoid the charges; the dates the charges will be submitted for payment; the specific steps the consumer must take to avoid the charges; when a consumer's cancellation request must be received by Defendants or Defendants' business; a telephone number or address where the consumer's cancellation request should be direction. With respect to the first of such automatic shipment or automatic renewal, the telephone disclosures must identify the specific date by which the consumer must take an affirmative action to avoid the charge.

GG. Violating any provision of the federal Telemarketing Sales Rule, 16 C.F.R. Part 310 or section 44.102(a) of the Texas Business and Commerce Code, as in effect now or as they may be amended.

HH. Conducting any telemarketing calls which result in the shipment of goods or services and any related customer service calls without such calls being recorded

in their entirety and such recordings being kept on file with Defendants for a period of one year from the date of such call.

II. Failing to honor a request from a consumer to cancel enrollment in any negative option, continuity, or membership program, when such request is consistent with clearly and conspicuously previously disclosed terms and conditions of the program.

JJ. Automatically enrolling consumers in a negative option feature, a continuity plan, or membership upon purchase of another product or service or as a condition of the purchase of another product or service, unless the consumer gives express authorization.

3.2 IT IS FURTHER ORDERED THAT Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC, for a period of five years beginning from the date of this judgment provide a copy of this Agreed Final Judgment and Permanent Injunction or a summary of injunctive provisions A through [JJ to](#) individuals who are involved in telemarketing activities for or on the behalf of Defendants or Defendants' businesses. Such a summary may be included in an employee policies and/or procedure manual. This provision applies individuals working for or on the behalf of Defendants or Defendants' businesses currently or in the future.

3.3 IT IS FURTHER ORDERED THAT Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC. immediately cease charging current or past customers for memberships and/or access for on-line scholarship information offered by or through The SAT and ACT Prep Center and The Student Resource Center.

#### 4. MONETARY RELIEF

4.1 IT IS FURTHER ORDERED THAT that State of Texas shall have judgment against Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC, jointly and severally, in the amount of TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00) as civil penalties pursuant to Tex. Bus. & Com. Code Ann. § 17.47(c)(1). IT IS FURTHER ORDERED THAT this sum shall be abated for a period of five (5) years from the date of this judgment without any interest accruing conditioned on Defendants' substantial and material compliance with the terms of this agreed judgment and permanent injunction. If Defendants pay the other monetary amounts specified in paragraphs 4.2 and 4.3 and do not violate the terms of this permanent injunction specified in paragraphs 3.1 A though JJ for a period of five years, Defendants will not have to pay the abated amount of \$20,000.00 in civil penalties, nor will they ever have to. It is further ordered that these civil penalties are for a governmental unit and are not compensation for actual pecuniary loss.

4.2 IT IS FURTHER ORDERED THAT the State of Texas shall have judgment against Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC, jointly and severally, in the amount of TEN THOUSAND DOLLARS AND NO CENTS (\$10,000.00) to be used for restoration of money or other property taken from consumers of THE SAT AND ACT PREP CENTER and THE STUDENT RESOURCE CENTER. The State of Texas shall disburse any collected restitution herein to consumers as it deems appropriate and necessary. It is further ordered that any restitution monies collected pursuant to this judgment that remain undistributed after a reasonable time shall revert to the State of Texas and shall be credited to the judicial fund

for programs approved by the supreme court that provide basic civil legal services to the indigent., pursuant to Tex. Gov't Code § 402.007(b).

4.3 IT IS FURTHER ORDERED THAT the State of Texas shall have judgment against Defendants THE SAT AND ACT PREP CENTER, INC., JOHN JOSEPH STUART, FRANCES STUART, and THE STUDENT RESOURCE CENTER, LLC, jointly and severally, in the amount of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00) as reasonable and necessary attorney's fees and investigative costs.

4.4 Defendants shall make payments pursuant to paragraphs 4.2 and 4.3 according to the terms set out in the Judgment Payment Agreement, which is incorporated herein.

4.5 As evidenced by the signatures below, Defendants have received actual notice of this permanent injunction.

4.6 IT IS FURTHER ORDERED THAT the Clerk of this Court shall, upon request of Plaintiff, issue a writ of permanent injunction in conformity with the law and terms of this Order to Defendants.

4.7 This Final Judgment shall in no way affect the rights of individual citizens.

4.8 The court retains jurisdiction to enforce this final judgment and permanent injunction

4.9 All costs of court are to be paid by Plaintiff.

4.10 All relief not granted herein is denied.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

---

JUDGE PRESIDING

AGREED:

GREG ABBOTT  
Attorney General of Texas

DANIEL HODGE  
First Assistant Attorney General

WILLIAM J. COBB, III  
Deputy Attorney General for Civil Litigation

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

---

MADALYN S. WELLS–SBN 24027430  
ANDREW D. LEONIE–SBN 12216500  
STEVEN ROBINSON–SBN 24046738  
PATRICIA STEIN–SBN 24033222  
Assistant Attorneys General  
Consumer Protection & Public Health Division  
1412 Main St., Ste. 810  
Dallas, Texas 75202  
(214) 969-7639 ext. 8830  
(214) 969-7615 fax

ATTORNEYS FOR PLAINTIFF

---

JOHN JOSEPH STUART,  
individually and on behalf of Defendant  
THE SAT AND ACT PREP CENTER, INC.  
780 Lovern St.  
Cedar Hill, TX 75014

---

FRANCES STUART, individually and  
on behalf of Defendant THE STUDENT  
RESOURCE CENTER, LLC.  
780 Lovern St.  
Cedar Hill, TX 75014

DEFENDANTS

---

Mark L. Hill  
SBN 24034868

Cowles & Thompson, PC  
904 Main St., Ste. 3900  
Dallas, Texas 75202  
(214) 672-2143  
(214) 672-2343 fax

ATTORNEY FOR DEFENDANTS