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Chris Daniel - District Clerk
Harris County
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By: daunshae n. willrich

NO. 2009-22757

STATE OF TEXAS,
Plaintiff

v.

JK HARRIS & COMPANY, LLC,
JKH FINANCIAL RECOVERY
SYSTEMS LLC; and PROFESSIONAL
FEE FINANCING ASSOCIATES,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this day, came on to be considered the above-entitled and numbered cause in which the State of Texas is Plaintiff (hereinafter "Plaintiff") and JK Harris & Company, LLC; JKH Financial Recovery Systems LLC; and Professional Fee Financing Associates are Defendants (hereinafter "Defendants"). Plaintiff and Defendants (hereinafter the "Parties") by and through their attorneys of record, announced to the Court that they have compromised and settled all claims stated by Plaintiff in this cause and presented to this Court this Agreed Final Judgment and Permanent Injunction ("Judgment").

I.

By their duly authorized signatures, the Parties stipulate to the Court the following: that they understand and agree to the terms of 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 a writ of injunction are waived; that the terms of this Judgment are sufficiently detailed and specific enough to be enforceable by the Court in conformance with TEX. R. CIV. PRO. 683; that this Judgment represents a compromise and settlement of all matters arising out of the allegations made by Plaintiff in this cause.

Defendants, desire to resolve this litigation without trial, consent to entry of this Judgment, which consent is not an admission of liability by Defendants as to any issue of fact or law, nor does Plaintiff claim otherwise. The Parties do not contest jurisdiction of the Court and do not contest entry of this Judgment.

Based on the representation of the Parties, it appears to the Court that all Parties agree to the entry of this Judgment and that they have approved its entry by the duly authorized signatures of their respective attorneys below. The Court, upon the stipulations of the Parties and after being fully advised in this matter, finds as follows: that it has jurisdiction over the Parties and subject

matter of this suit; that the settlement of this dispute is agreed to by the Parties; and that it would be in the best interests of the Parties if the Court approved the settlement and rendered judgment accordingly.

Based upon 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 set forth in this Judgment and all other relief set forth in this Judgment shall be granted.

II.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, as used in this Judgment, the following terms are defined as follows:

1. "Consumer" means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of \$25 million or more, or that is owned or controlled by a corporation or entity with assets of \$25 million or more.
2. "Defendants" means JK Harris & Company, LLC; JKH Financial Recovery Systems LLC; and Professional Fee Financing Associates, whether acting directly or through any subsidiary, affiliate, division, or through its successors, assigns, officers, agents, subcontractors, servants, employees, attorneys, corporations and any other persons in active concert or participation with them.
3. "Client" shall mean a Consumer who has engaged any one of the "Defendants" to provide any services related to IRS representation or IRS services on the Consumer's behalf.
4. "Selling", "marketing", "promoting", "distributing" or "advertising" means any type of contact occurring in any form, including the internet, with a person or entity for the purpose of requesting, persuading, or seeking any type of contribution, sponsorship, compensation or anything of value from said person or entity for any reason whatsoever.
5. "Offer in Compromise " or "OIC" shall be as defined by all relevant IRS rules and regulations.
6. "Internal Revenue Service" or "IRS" shall mean the division of the U.S. Department of the Treasury responsible for the collection of income, excise, and other taxes and the enforcement of the tax laws of the United States.
7. "Clear and conspicuous" and "Clearly and conspicuously" shall mean that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in direct proximity to the

information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. For print communications, the message shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in print that contrasts with the background against which it appears. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to comprehend it. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented in the audio or visual portions of the communication so as reasonable for the viewer to understand it. In any communication presented solely through visual or audio means, the message must be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Any visual image shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for a consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

8. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which information might be conveyed.

9. "OIC Approval Rate" means the Success Rate and the Percentage Reduction Rate.

10. "Success Rate" means the number of clients who had their OICs approved by the IRS, divided by the number of clients who signed a contract to prepare an OIC, paid the amount owed in full, and provided all necessary documentation. The Success Rate is calculated on an annual basis.

11. "Percentage Reduction Rate" means the average reduction of original tax debt resulting from approval of the OIC in a given tax year, as published by the IRS or GAO. "GAO" means the United States Government Accountability Office.

12. "Difficulty Statement" means the following statement: "The IRS does not routinely accept Offers in Compromise and will not do so where there are any assets that can be used to satisfy the tax debts, or the tax debt can be paid from the taxpayer's future wages. Assets include things like real estate and bank accounts, but they also include home equity; retirement accounts, such as IRAs and 401(k)s; other retirement benefits, such as a pension or Social Security payments; vehicles; and valuable personal property, including jewelry, guns, collectibles, and the like."

13. "Termination Notice" means the following statement, written in all caps bold font: **"FAILURE TO RESPOND TO THIS REQUEST FOR INFORMATION WITHIN TEN (10) BUSINESS DAYS MAY RESULT IN TERMINATION OF YOUR CONTRACT"**. If the correspondence is sent by fax, the Termination Notice must be at least 8-point typeface and appear on the top each page. If the correspondence is mailed, the Termination Notice must appear

in 8-point typeface on the envelope and on the top of each page. If the correspondence is emailed, the Termination Notice must appear in the body of the email in the same size font as the other text in the body of the email.

III.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Defendants who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be permanently enjoined from engaging in the following acts or practices:

A. Representing that Defendants have been successful in obtaining approval of OIC's from the IRS, unless Defendants simultaneously, and clearly and conspicuously, disclose the OIC Approval Rate for a given tax year (not to exceed more than four years prior);

B. Representing that by engaging the Defendants services, the Consumer is likely to obtain approval of an OIC from the IRS, unless Defendants simultaneously disclose the Difficulty Statement and the OIC Approval Rate;

C. Representing that by engaging the Defendants services, a Consumer is likely to obtain any other form of tax relief from the IRS (such as a payment plan), unless Defendants simultaneously disclose the percentage of the Defendants' clients that have obtained such tax relief from the IRS in any given tax year (not to exceed four years prior);

D. Advertising statistics or percentages regarding the IRS's acceptance of reduced amounts of tax debts unless the advertisement clearly and conspicuously discloses the OIC Approval Rate;

E. Representing or implying that the IRS collects only a small portion of the dollar amount of past due tax debts unless Defendants also simultaneously disclose (i) that the IRS does not typically forgive past due tax debts; (ii) the OIC is the primary way of obtaining forgiveness; and (iii) the OIC Approval Rate;

F. Representing any IRS statistics that would materially mislead Consumers to believe that obtaining approval of an OIC is statistically more probable than the actual IRS-generated statistics indicate, unless such representation is consistent with the Success Rate;

G. Representing that a Consumer qualifies or is eligible for the IRS's OIC program, unless (i) Defendants have obtained documents from the Consumer typically relied upon by the IRS in evaluating OIC eligibility, and (ii) based on such documentation, Defendants have a reasonable basis to believe that the Consumer is eligible for an OIC under IRS guidelines;

H. Entering into a contract with, charging, or accepting payment from a Consumer for any services related to an OIC, including determination of eligibility, unless Defendants first clearly and conspicuously disclose the OIC Approval Rate;

I. Representing that Defendants will perform services for Consumers in a specific manner, unless Defendants actually do perform those services as represented;

J. Retaining any amount of a refund that is due and owed to a Client for more than 60 days after receiving a proper request. Whether a refund is "due and owed" is determined by the contract between any of the Defendants and the Client. If any of the Defendants fail to timely communicate the results of the Client's likely eligibility for the OIC program within 60 days after the first date on which Defendants had in their possession payment in full for services related to the eligibility determination and all documentation from the Client reasonably necessary to make the eligibility determination, a refund is, *per se*, "due and owed" regardless of the contract. A Client requests a refund if he, she, or it communicates the request, orally, electronically, or in writing to any representative of Defendants. Nothing in this subparagraph shall prohibit Defendants from terminating a written contract for OIC services due to non-payment in whole or in part according to the terms of the contract;

K. Representing that Defendants guarantee results of any kind, unless such representations are accurate and are neither confusing, deceptive, nor misleading, and unless the represented guarantees are fully supported by prior documentation that will be made available by Defendants to the Plaintiff for review upon written request within 10 business days of such request;

L. Advertising, representing, or promoting (including testimonials, solicitations, brochures, or other explanatory materials) "Defendants" OIC or other tax debt forgiveness-related services in which "Defendants" make representations, expressly or by implication, about Defendants success rates or about IRS OIC statistics (including applicants' overall eligibility and likelihood of qualifying for the OIC program), or in which the Defendants discuss or give examples of offer acceptance rates, average amounts of offers accepted by the IRS, or the rates of debt forgiveness/reduction that be potentially achieved, unless such representations are fully supported by prior documentation that will be made available by Defendants to the "Plaintiff" for review upon written request within 10 business days of such request;

M. Failing to take reasonable steps to obtain and update records of Client contact information, including but not limited to mailing addresses, phone and fax numbers, and email addresses, as provided by Clients for communication purposes. Defendants have complied with this requirement if they update their records within 30 days of receiving written notice from a Client that his, her, or its contact information has changed;

N. Failing to provide Clients with Defendants current contact information, including but not limited to mailing and physical addresses, email addresses, and phone and facsimile numbers, and advising Clients of any changes as soon as reasonably practicable;

O. Failing to provide the Termination Notice ten days prior to terminating any Client contract. The Termination Notice must be sent by both physical and electronic mail if both sets of contact information have been provided by the Client. For example, if the Client provides a mailing address and email address, the Termination Notice must be sent by mail and email.

Defendants have complied with this requirement if they send the Termination Notice to the physical and email addresses on file at the time the Termination Notice is sent, regardless of whether the Client receives the Termination Notice, unless Client has notified Defendants of his, her, or its new contact information in writing prior to or within 30 days of the date the Termination Notice is sent.

P. Within 10 days of a Client's file being closed for any reason, failing to provide written notice to the Consumer that his, her, or its contract has been completed, terminated, or rescinded, as the case may be. Written notice that a Consumer's file has been closed shall be provided in the same manner as the Termination Notice.

Q. Failing to provide to Plaintiff upon written request prior documentation supporting any representations made by Defendants in any advertising, marketing or promotional materials of any kind within 5 business days of Plaintiff's request if the information is within Defendants' possession, or 10 business days of Plaintiff's request requires obtaining the information from a third party;

R. Representing or implying at any time before the IRS has accepted an OIC that a Client's IRS debt will be reduced by a certain amount or settled within a certain range;

S. Failing to disclose in writing to Consumers the total amount that will be charged for Defendants services and all associated costs;

T. Failing to disclose in writing to Clients, clearly and conspicuously, that the Client's tax debt will continue to accrue interest and penalties if the OIC is not accepted by the IRS;

U. Failing to disclose in writing to Clients, clearly and conspicuously, that the IRS is likely to continue collection efforts, including liens, levies and garnishment procedures, unless and until an OIC is accepted;

V. Failing to disclose in writing to a Client any communications made by the IRS concerning the Client's tax debt, unless it is apparent from the face of the communication that it has already been transmitted to the Client.

W. Pursuing collection activities against Clients that did not have an OIC submitted to the IRS or who have requested a refund from Defendants.

IT IS FURTHER ORDERED THAT in the event Plaintiff believes that any of the Defendants is not in compliance with the terms of this Section III of the Judgment, the Plaintiff shall promptly provide that Defendant with written notice of the potential non-compliance. The Plaintiff and Defendants shall attempt to resolve the dispute informally. After 30 days, if the dispute is not resolved by agreement, either Party may seek relief from the Court. The 30-day time period for dispute resolution may be extended by written agreement of the parties. Defendants shall be liable for a stipulated penalty of not less than \$500.00 and not more than \$1,000.00 for each act or incident that results in a violation or violations of a provision of Section

III of this Judgment, to be determined by this Court. Occasional good faith mistakes and errors shall not constitute grounds for the Plaintiff to seek enforcement of this Judgment in Court.

IV.

This Judgment is a complete settlement and release of all claims against Defendants, including their directors, officers, employees, agents, and representatives, under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§17.41 *et seq* as set forth in Plaintiff's Second Amended Petition that have been or could have been brought based upon actual or alleged acts, practices or courses of conduct that have occurred through the date of this Judgment. Nothing in this Judgment shall be deemed to preclude the Office of the Attorney General's review of the acts, practices or courses of conduct that occur after the entry of this Judgment, nor to impair any right of any of the Defendants to defend any such review, threatened or actual litigation the Plaintiff may pursue, or to assert any right, defense or remedy it may have or seek to pursue.

This Judgment is not intended to grant or limit any legal rights or remedies of any nature to any third party. This Judgment may not be relied upon by third parties to assert or defend any rights or remedies it might have or pursue, but the effect of this Judgment is between the Parties.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the STATE OF TEXAS shall have judgment against Defendants herein, jointly and severally, in the amount of Eight hundred thousand dollars (\$800,000.00), which shall be reserved to be paid to Texas Consumers for restitution by Plaintiff ("Restitution Funds"). Plaintiff will be responsible for distributing the Restitution Funds to Texas Consumers, and will be responsible for the timing, manner, and amount of said distribution in its sole discretion. Defendants will provide reasonable assistance and information to Plaintiff required to implement said distribution; and, said assistance and/or information will be provided by Defendants to Plaintiff within thirty (30) days of Plaintiff's making such request. A portion of the Restitution Funds may be used by the Plaintiff to pay certain third parties as it deems necessary and for the sole purpose of assisting the Plaintiff in distributing the Restitution Funds to Consumers. Any undistributed Restitution Funds will be allocated to the State of Texas pursuant to §402.007 of the Texas Government Code. Plaintiff will provide Defendants with an accounting of any payments made to Consumers from the Restitution Fund upon reasonable notice and request.

IT IS FURTHER ORDERED that Defendants shall pay Plaintiff the amount of Four hundred thousand dollars (\$400,000) ("Attorneys' Fees") for reimbursement of the State's attorneys' fees, court costs and investigative costs incurred in this case, which sum is for the benefit of the State of Texas, a governmental unit, and which is not compensation for any actual or pecuniary loss and does not constitute an antecedent debt with respect to this litigation.

Defendants shall pay the total amount of Restitution Funds and Attorneys' Fees to the Office of Attorney General as provided in the Settlement and Payment Agreement.

VI.

IT IS FURTHER ORDERED that in the event of a default on payment of the Restitution Funds or the Attorneys' Fees ordered herein, interest shall accrue on the defaulted amounts at the statutory post-judgment rate from the date of default until paid or collected. The date of default is defined as the next business day after the expiration of any applicable cure period. Defendants shall pay all accrued interest at the same time and in the same manner as stated in the payout agreement.

VII.

The Parties agree this Court has exclusive jurisdiction and is the exclusive venue for enforcement of this Judgment. The Parties further agree that any Party to this Judgment may apply to this Court for such further orders as may be necessary for the construction and carrying out of this Judgment.

VIII.

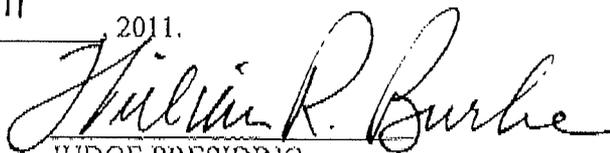
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants, by their signatures below, hereby acknowledge notice of this Judgment and acceptance of same; therefore, no injunctive writ need be issued. The State of Texas may enforce the Permanent Injunction through any procedure or process available under the laws of the State of Texas.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all taxable costs of Court are to be taxed the Party which incurred the same; that is, each Party is to pay their own taxable Court costs and litigation expenses.

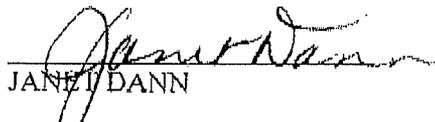
This is a final Judgment. All relief not expressly granted herein is denied.

Signed on MAR 29 2011 , 2011.

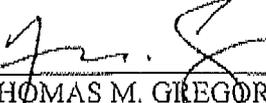

JUDGE PRESIDING

AGREED TO AS TO FORM & SUBSTANCE:

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Attorney General of Texas
DANIEL T. HODGE
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