

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 10 CV 007471

STATE OF NORTH CAROLINA ex rel.)
Roy Cooper, Attorney General,)
)
Plaintiff,)
)
v.)
)
DAVID J. TABB, an individual;)
)
and)
)
CREDEXX CORPORATION, a California)
corporation, d/b/a AUTO ONE WARRANTY)
SPECIALISTS)
)
Defendants.)

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

FILED
2010 DEC 21 AM 11:10
WAKE COUNTY, N.C.
BY _____

PREAMBLE

THIS CAUSE came before the undersigned Judge for entry of a Consent Judgment between Plaintiff State of North Carolina, by and through its Attorney General Roy Cooper (the “State” or “Plaintiff”), and Defendants David J. Tabb and Credexx Corporation d/b/a Auto One Warranty Specialists (“Credexx”) (collectively, “Defendants”).

The Court, with the consent of all Parties, makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1. The State of North Carolina is the Plaintiff in the case.
2. David J. Tabb (“Tabb” or “Defendant”) and Credexx Corporation d/b/a Auto One Warranty Specialists (“Credexx” or “Corporate Defendant”) are the Defendants in the case.

3. Credexx advertised, offered for sale, and sold motor vehicle service contracts and automobile additives with a limited product warranty (collectively, "service contracts") to consumers within the state of North Carolina.

4. Tabb is the president and sole shareholder of Credexx.

5. Tabb and Credexx are the proper parties to this Judgment. Tabb warrants and represents that the individual(s) signing this Judgment is fully authorized to enter into this Judgment and to legally bind himself and Credexx to all of the terms, conditions and injunctions of this Judgment

6. The State and the Defendants have resolved the matters in controversy between them and have consented to the terms of this Judgment.

7. This Judgment is entered into by the Defendants as a free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Judgment.

8. This Judgment is entered into by the State based upon the financial schedules signed by Tabb on September 29, 2010 ("Financial Schedules") and provided by Tabb to the State. This Judgment is expressly premised upon the truthfulness, accuracy and completeness of the Defendants' financial condition as represented in the Financial Schedules. The Financial Schedules contained material information relied upon by the State in negotiating and agreeing to the terms of this Judgment. The failure to provide the State with truthful and accurate Financial Schedules constitutes a violation of this agreement affording the State all remedies provided by law.

9. Nothing in this Judgment constitutes any admission of guilt or liability by the Defendants. The Parties acknowledge that this agreed Judgment is in their mutual best interests

and is preferable to litigation concerning Plaintiff's allegations in North Carolina and Defendants' defenses to those allegations.

10. Defendants are not admitting that each of the acts alleged, if proved in a court of law, would necessarily constitute a violation of any federal, state or local law; but Defendants acknowledge that this Judgment constitutes legal notice and knowledge that it is the State's position that the alleged acts constitute a state or federal law violation.

11. The State alleges that Tabb participated personally in: (a) the design, establishment, and approval of Credexx' advertising, marketing and sales practices; (b) the establishment and implementation of Credexx' refund policies and practices; (c) the hiring and firing of sales personnel and other representatives of Credexx whom Tabb directed to, and who did, carry out Credexx' advertising, marketing and sales practices; and (d) the training, direction and oversight of sales personnel and other representatives of Credexx.

12. The State alleges that the Defendants violated N.C.G.S. §§ 75-1.1, *et seq.*, by selling and marketing or causing to be sold and marketed contracts and in a false, deceptive and misleading manner, including but not limited to the following:

- a. Misrepresenting the nature of the service contract as a "warranty," "factory warranty," or "extended warranty," when in fact the product being sold is not a "warranty," "factory warranty," or "extended warranty"
- b. Advertising service contracts for sale and failing to clearly and conspicuously disclose all material exclusions, reservations, limitations, modifications, or conditions of such offers;
- c. Asserting without a basis in fact that a consumer's motor vehicle warranty had expired, was expiring, or was about to expire;

- d. Representing that: (1) the service contracts had sponsorship, approval, scope of coverage, accessories, uses, or benefits that they did not have; (2) the service contracts were of a particular standard, quality, grade, style, prescription, or model, that they were not; (3) the service contracts were available to the consumer for a reason that does not exist; (4) a specific price advantage existed, when it did not; (5) the purported extended warranty plans were affiliated with the automobile manufacturers and/or the motor vehicle dealerships from which the consumers purchased their motor vehicles, when they were not; and (6) the service contracts involved or did not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations, when such representations were false;
- e. Accepting substantial down payments from consumers for service contracts, then failing to deliver the goods and/or services contracted for or return the down payments to the consumers;
- f. Engaging in a pattern or practice of failing to provide prompt refunds to consumers, issuing refunds that were less than the amount required by contract or state law, or denying valid refund;
- g. Causing consumers to enter into service contracts when Defendants knew of the inability of the consumer to receive a substantial benefit from the contracts; and
- h. Making misleading statements of opinion regarding the service contracts on which the consumer was likely to rely to the consumer's detriment.

13. Defendants deny each and every one of the allegations above.

BASED ON THE FOREGOING FINDINGS OF FACT AND THE AGREEMENT OF THE PARTIES MANIFESTED HEREIN, the Court concludes as follows:

II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. Venue is proper.
3. Plaintiff, Attorney General, Roy Cooper, has authority under N.C.G.S. §§ 75-14, 75-15, 75-105 and 66-266 to bring this action on behalf of the State of North Carolina.
4. This Judgment shall be governed by the laws of the state of North Carolina.
5. Good cause exists for the Court to enter judgment as to Defendants, as set forth herein.
6. The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties. The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.
7. Nothing contained herein shall be construed to waive any individual right of action by a consumer.

BASED ON THE FOREGOING FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE AGREEMENT OF THE PARTIES MANIFESTED HEREIN IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

III. DEFINITIONS

For purposes of this Judgment, the following definitions apply:

1. "Tabb" shall mean David J. Tabb, whether operating under his own name or any other business names, including all other persons acting in concert or participation with him, directly or indirectly, or acting on behalf of Tabb or at his direction, through any corporate device, partnership or association, jointly and severally, including all persons and entities that receive notice of this Judgment.

2. "Service contract" shall mean a contract or agreement (a) that contains a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of a motor vehicle and includes vehicle protection products; or (b) that provides indemnification for repair, replacement or maintenance of a motor vehicle due to an operational or structural defect in materials, workmanship or normal wear and tear; and (c) may or may not include additional provision for incidental payment of indemnity under limited circumstances, including but not limited to, towing, rental and emergency road service. This definition includes automobile additives with a limited product warranty.

3. "Telemarketing" or "telephone solicitation" shall carry the meaning at N.C.G.S. § 75-101(9) and shall mean a voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. "Telephone solicitation" and "telemarketing" also includes those transactions as defined in the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101 *et. seq.*, the Telemarketing Sales Rule, 16 CFR Part 310, or by North Carolina law. However, nothing herein shall be construed to affect, restrict, limit, waive, or alter the definition of "telemarketing" or "telephone solicitation" under the laws and statutes of the states, and nothing herein shall be construed to limit the authority of the North Carolina to enforce federal or state laws and statutes, including those regarding "telemarketing" and "telephone solicitations."

4. The "Effective Date" shall mean the date by which all Parties have executed the Judgment.

IV. INJUNCTIVE PROVISIONS

Pursuant to N.C.G.S. § 75-14, Defendants, under their own name or any other business names, including any officers, directors, agents, representatives, salespersons, employees, independent contractors, affiliates, successors and assigns, and all other persons acting in concert or participation with them, directly or indirectly, or acting on behalf of Defendants or at Defendants' direction, and who have actual or constructive notice of this Judgment, are hereby permanently **RESTRAINED** and **ENJOINED** from engaging in any conduct that does not comply with Section V of this Judgment.

V. COMPLIANCE

Pursuant to N.C.G.S. § 75-14, Defendant Tabb, under his own name or any other business names, any officers, directors, agents, representatives, salespersons, employees, independent contractors, affiliates, successors and assigns, and all other persons acting in concert or participation with Tabb, directly or indirectly, or acting on behalf of Tabb or at his direction, and who have actual or constructive notice of this Judgment, agree to comply with the following provisions:

1. Approval of Defendants' Conduct. Defendants shall not represent or imply that the State approves of Defendants' past business practices, current efforts to reform its practices, or any further practices that Defendants may adopt or consider adopting.

2. Jurisdiction. Defendants agree to waive their right to contest all matters of jurisdiction if the State pursues a contempt action against Defendants based on any violation of this Judgment.

3. Efforts to Comply with this Consent Judgment. Tabb shall not sell, offer to sell or provide to anyone any materials that would enable any other person or business to engage in any act or practice that would violate this Judgment were it committed directly by Tabb. Tabb shall not direct, train, instruct, or induce any person to perform any act prohibited by, or refrain from performing any act required by, this Judgment.

4. Permanent Telemarketing Prohibition. Defendants shall not engage in any telemarketing sales or telephone solicitations (as that term is defined by the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101 *et. seq.*, the Telemarketing Sales Rule, 16 CFR Part 310, or by North Carolina law) to North Carolina consumers. This Paragraph, which never expires, also applies to any business that Tabb owns, operates, or manages now and in the future.

5. Permanent Prohibition Against Doing Business in North Carolina. Defendants shall not engage in “commerce” (as that term is defined in N.C.G.S. § 75-1.1(b)) in North Carolina. This Paragraph, which never expires, also applies to any business that Tabb owns, operates, or manages now and in the future. Nothing in this Paragraph, however, prevents Tabb from:

- a. Engaging in personal sales transactions with North Carolina consumers;
- b. Engaging in personal sales transactions that involve property located in North Carolina; and
- c. Working as a supervised employee of persons who may engage in commerce in North Carolina.

6. Service Contract Prohibition. Defendants shall not engage in the marketing or administration of service contracts, or any other aspect related to or associated with the sales of

service contracts, to North Carolina consumers. This Paragraph, which never expires, also applies to any business that Tabb owns, operates, or manages now and in the future.

VI. PENALTIES / PAYMENT TO THE STATE

1. Civil Penalty. The State is hereby awarded a civil penalty against the Defendants in the amount of \$50,000. Said Civil Penalty is to or for a governmental unit and is not for pecuniary loss. Said Civil Penalty shall be suspended contingent on Defendants full compliance with the terms of this Judgment. If this Court later determines that Defendants violated this Judgment or that the Financial Statements provided by Tabb during the course of this litigation were inaccurate or otherwise misleading, Tabb shall pay the Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's order.

2. Fees and Costs. The State is further awarded the sum of Three Thousand Dollars (\$3000) for attorneys' fees, investigative costs, consumer education, enforcement or other consumer protection purposes at the discretion of the Attorney General. Defendants shall pay the amount set forth above in three (3) installments of One Thousand Dollars (\$1,000) each via cashier's check made payable to the North Carolina Department of Justice and sent to

NCDOJ/Consumer Protection Division
Attn: Kimberly L. Wierzel
114 W. Edenton St.
Raleigh, North Carolina 27602

The initial installment of One Thousand Dollars (\$1,000) has been tendered with this executed Judgment, and by his Assistant Attorney General's signature below the Attorney General hereby acknowledges its receipt. The second installment of One Thousand Dollars (\$1,000) shall be tendered to the State within 30 days of the effective date of this Judgment. The final installment shall be tendered to the State within 60 days of the effective date of this Judgment. Failure to

make any payment shall be construed as a violation of this Judgment. If Tabb files personal bankruptcy before the expiration of the 60 days, the State shall seek payment of the costs and fees through the bankruptcy court.

VII. RELEASE OF CLAIMS

By execution of this Judgment, the State releases the Defendants from all civil claims, causes of action, damages, fines, costs or penalties that were asserted by the State in the Complaint filed in this matter. Notwithstanding the foregoing, the State may institute an action or proceeding to enforce the terms and provisions of this Judgment.

VIII. JURISDICTION RESERVED

The Court reserves jurisdiction over this action for the following purposes:

1. In order to take any further action deemed necessary to enforce this Judgment and to award the State judgment for any costs, including attorney's fees, it incurs in the event of noncompliance by Defendant.

2. In order to take further action for Tabb's: (a) failure to disclose any material asset; (b) material misrepresentation of the value of an asset; (c) or any other material misrepresentation or omission on Tabb's Affidavit that conceals the existence of assets, including but not limited to claims involving fraudulent transfers or piercing the corporate veil. Plaintiff may request that the Consent Judgment be re-opened for the purpose of allowing Plaintiff to modify Tabb's monetary liability. Proceedings instituted under this provision would be in addition to and not in lieu of any other remedies as may be provided by law. A finding of material misrepresentation or omission as to the Affidavit shall in no respect modify any other term or condition of this Judgment. In all other respects, this Judgment shall remain in full force and effect unless otherwise ordered by the Court.

IT IS SO ORDERED THIS 21st day of December 2010.

Howard E. L.
JUDGE

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

Roy Cooper
Attorney General

Ken Wergel
ATTORNEY NAME

DATED: 12-21-10

DEFENDANT DAVID J. TABB, Individually

D. J. Tabb
DAVID J. TABB, Individually

DATED: 12/20/2010

DEFENDANT CREDEXX CORPORATION d/b/a AUTO ONE WARRANTY SPECIALISTS

By:

D. J. Tabb
DAVID J. TABB, President and
Sole Shareholder

DATED: 12/20/2010