

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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|-------------------------------------|---|------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | |
| NORTH AMERICAN CAPITAL CORPORATION, |) | |
| a New York corporation, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

CONSENT DECREE

WHEREAS: Plaintiff, the United States of America, has commenced this action by filing the complaint herein; Defendant has waived service of the summons and complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendant admitting liability for any of the matters alleged in the complaint;

THEREFORE, on the joint motion of Plaintiff and Defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.
2. The complaint states a claim upon which relief may be granted against the

Defendant under Sections 5(a)(1), 5(m)(1)(A), 9, 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 49, 53(b), and 56(a), and Section 814 of the Fair Debt Collection Practices Act ("FDCP Act"), 15 U.S.C. § 1692¹.

3. For purposes of this Consent Decree, the definitions set forth in the FDCP Act, 15 U.S.C. § 1692, shall apply.

CIVIL PENALTY

4. Defendant, its successors and assigns, shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of \$250,000.

5. Defendant shall make the payment required by Paragraph 4 on or before the fifth day following entry of this Consent Decree by electronic fund transfer in accordance with the instructions to be provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530 on or before the date of entry of this Consent Decree.

6. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

INJUNCTION

7. Defendant, its successors and assigns, and its officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby permanently enjoined, directly or through any corporation, subsidiary, division or other device, in

connection with the collection of a “debt” from a “consumer,” as a “debt collector,” as those terms are defined in Sections 803(3), (5) and (6) of the FDCP Act, 15 U.S.C. § 1692a(3), (5), and (6) from

- a. Except as provided in Section 804 of the FDCP Act, communicating or threatening to communicate with any person other than the consumer, the consumer’s attorney, a consumer reporting agency if otherwise permitted by law, a creditor or seller of the debt, such creditor’s or seller’s attorney or debt collector, or such debt collector’s attorney, in connection with the collection of a debt, for any purpose other than to obtain location information about a consumer not previously known to Defendant, unless Defendant obtained directly the prior consent of the consumer, or the express permission of a court of competent jurisdiction, or unless such communication is reasonably necessary to effectuate a post judgment judicial remedy, in violation of Section 805(b) of the FDCP Act, 15 U.S.C. § 1692c(b);
- b. Engaging in any conduct the natural consequence of which is to harass, oppress, or abuse a person, including but not limited to, using obscene or profane language, or language the natural consequence of which is to abuse the hearer, in violation of Section 806(2) of the FDCP Act, 15 U.S.C. § 1692d(2);
- c. Using any false, deceptive, or misleading representation or means in connection with the collection of any debt, in violation of Section 807 of the FDCP Act, 15 U.S.C. § 1692e, including but not limited to,

- i. Representing or implying that nonpayment of a debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person, unless such action is lawful and Defendant intends to take such action, in violation of Section 807(4) of the FDCP Act, 15 U.S.C. § 1692e(4);
- ii. Representing or implying that any action will be taken, unless, at the time of the representation, the action may legally be taken and is intended to be taken, or that any action may be taken, unless, at the time of the representation, there is a reasonable likelihood that such action will be taken, in violation of Section 807(5) of the FDCP Act, 15 U.S.C. § 1692e(5); and
- iii. Using false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCP Act, 15 U.S.C. § 1692e(10); and
- d. Engaging in any other act or practice that would violate the FDCP Act, as amended, 15 U.S.C. § 1692.

NOTICE REQUIREMENTS

8. With respect to every consumer debt received for collection, beginning sixty (60) days after the date of entry of this Consent Decree, Defendant and its successors and assigns shall, for a period of five (5) years make the following disclosure clearly and conspicuously on each written collection communication that is sent to a consumer:

This company must comply with a federal law that provides consumers with certain rights. One of these is the right to have us stop communicating with you about this debt. If you write to us and ask us to stop communicating with you about this debt, we will. But if you owe this debt, you will still owe it and the debt may still be collected from you. If you have any concerns with the way we are collecting this debt, you may write to our CONTACT CENTER, [current address] or call us toll-free at 1-800- [current phone number] between 9:00 A.M. Eastern Time and 5:00 P.M. Eastern Time Monday - Friday.

Currently, the Contact Center address is P.O. Box 1380, Buffalo, NY 14205-1380 and the toll-free number is 800-377-5913.

9. Defendant and its successors and assigns shall provide a copy of the following notice to all employees having responsibility with respect to the collection of debts, within sixty (60) days of the date of entry of this Consent Decree, and to each such employee hired for a period of five (5) years after that date, no later than the time the employee assumes responsibility with respect to the collection of debts, and shall secure from each such person a signed statement acknowledging receipt of a copy of the notice, which notice shall be maintained in the employee's personnel file, and made available upon request for inspection by the Federal Trade Commission pursuant to the provisions of Paragraph 14 of this Consent Decree:

Debt collectors must comply with the federal Fair Debt Collection Practices Act, which limits our activities in trying to collect money from consumers. Most importantly, Section 806 of the Act prohibits you from harassing, oppressing, or abusing a person, including, but not limited to, using obscene or profane language. In addition, Section 807 of the Act prohibits you from using false, deceptive, or misleading representations. Individual debt collectors may be financially liable for their violations of the Act.

DISTRIBUTION OF CONSENT DECREE AND FDCP ACT BY DEFENDANT

10. Defendant and its successors and assigns shall provide a copy of this Consent Decree and the FDCP Act to each of their officers, directors, employees and other persons having responsibility for creating or implementing debt collection policies and procedures, and shall secure from each such person a signed statement acknowledging receipt of a copy of this Consent Decree and the FDCP Act. Defendant shall comply with this provision, with respect to all persons within the scope of this Paragraph within sixty (60) days from the date of entry of this Consent Decree, and with respect to all new persons falling within the scope of this Paragraph during the five (5) years from the date of entry of this Consent Decree, within sixty (60) days after such persons assume their responsibilities. Within thirty (30) days of first complying with this Paragraph, Defendant shall file an affidavit with the Court and serve the Federal Trade Commission, by mailing a copy thereof, to the Regional Director, Northeast Region, One Bowling Green, Suite 318, New York, NY 10004, setting forth the fact and manner of their compliance.

MONITORING COMPLIANCE OF PERSONNEL

11. For a period of five (5) years from the date of entry of this Consent Decree, for the purpose of monitoring compliance with this Consent Decree, Defendant and its successors and assigns, in connection with any consumer debt collection business shall:

- a. Take the following steps with respect to employees having responsibility with respect to the collection of debts or Complaint handling for the purpose of ensuring compliance with Paragraph 7 of this Consent Decree:

- i. listening to a selection of communications with consumers made by various persons engaged in debt collection or Complaint handling functions;
- ii. establishing a procedure for receiving and responding to Complaints; and
- iii. ascertaining, when a Complaint is made, the number and nature of Complaints received within the previous three (3) years regarding any collector or collection manager involved in the complained-about transaction or communications, *provided*, however, that in ascertaining the number and nature of Complaints received by its Compliance Department prior to July 1998, Defendant shall not be required to review individual Complaint files;

provided that this Paragraph does not authorize or require Defendant to take any steps that violate any federal, state, or local laws;

- b. Promptly investigate any Complaint received by Defendant and its successors and assigns; and
- c. Take corrective action where Defendant determines that any officer, manager, or other employee is not complying with this Consent Decree, which may include training, warning, disciplining, and/or terminating such employee.

As used in Paragraphs 11, 12, and 13 of this Consent Decree, "Complaint" means any representation, by or on behalf of a consumer, that the Defendant has engaged in an act or practice

that, if engaged in, would constitute a violation of the Fair Debt Collection Practices Act; *provided*, however, that the provisions of Paragraphs 11, 12, and 13 shall apply only to Complaints provided to the Defendant (a) on behalf of a consumer by any governmental agency or official or a Better Business Bureau or similar organization, (b) by a consumer at either the address or the telephone number identified in the notice contained in Paragraph 8 hereof, or (c) otherwise received by Defendant's Compliance Department or equivalent, whether oral or in writing.

RECORD KEEPING PROVISIONS

12. Defendant and its successors and assigns shall maintain with respect to Complaints for a period of five (5) years the following information:

- a) The consumer's name, address, and telephone number;
- b) The creditor's name if different from Defendant and the seller of the debt's name, if known;
- c) Each letter or other form of written communication received;
- d) The nature of the Complaint, as reflected in any logs or notes, including a description of the conduct alleged;
- e) The name and position of each employee whose conduct is the subject of any Complaint;
- f) The disposition of any Complaint, including records of all contacts with the consumer, whether the Complaint was resolved and any other records that relate to the disposition of the matter;
- g) Any action taken to correct alleged conduct that violates the FDCP Act.

13. Defendant and its successors and assigns shall provide written notice of the disposition of his or her Complaint to each consumer who makes an oral or written Complaint at the address or via the toll-free telephone number required to be disclosed pursuant to Paragraph 8 of this Consent Decree. Such notice shall conform in substance with the form attached hereto as Appendix A.

COMPLIANCE REPORTING BY DEFENDANT

14. Defendant and its successors and assigns shall, within sixty (60) days of the date of the entry of this Consent Decree, and once each year thereafter for five (5) years within thirty (30) days of the anniversary of that date, file with the Federal Trade Commission a written report setting forth in detail the manner and form of its compliance with this Consent Decree.

15. For a period of five (5) years from the date of entry of this Consent Decree, Defendant and its successors and assigns shall maintain and make available to the Federal Trade Commission, within thirty (30) days of receipt of a written request, business records demonstrating compliance with the terms and provisions of this Consent Decree.

16. For purposes of this Consent Decree, Defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written reports, notifications, and other correspondence to the Commission to:

Regional Director
Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York, New York 10004

Re: United States of America v. North American Capital Corporation.

17. For purposes of compliance reporting, if current counsel no longer represents Defendant, Plaintiff is authorized to communicate directly with Defendant through its officers or directors.

18. For a period of five (5) years from the date of entry of this Consent Decree, Defendant and its successors and assigns shall notify the Federal Trade Commission in writing at least thirty (30) days prior to any change in the structure of Defendant, including, but not limited to, merger, incorporation, dissolution, assignment of all or substantially all of the assets of the business, sale which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect Defendant's obligations under this Consent Decree.

FURNISHING OF TAXPAYER IDENTIFICATION NUMBER

19. Defendant is hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Federal Trade Commission its taxpayer identifying number (employer identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such person's relationship with the government.

CONTINUING JURISDICTION

20. This Court shall retain jurisdiction of this matter for the purposes of enabling either of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

STIPULATED AND AGREED TO:

FOR THE DEFENDANT:

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Defendant North American Capital Corporation

By: _____
Jeffrey S. Wahl
President

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**FOR THE
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By: _____
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Civil Division
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(202) 307-2532

SO ORDERED, this _____ day of _____, 2000.

UNITED STATES DISTRICT JUDGE