

DATE SIGNED: November 21, 2022

Electronically signed by Stephen E Ehlke
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No. 2022-CX-7

N.C.W.C., Inc,
3430 Sunset Avenue
Ocean, NJ 07712,

Defendant.

CONSENT JUDGMENT

Pursuant to the Stipulation of the parties, the Court enters the following *Consent Judgment*:

I. FINDINGS

1. The *Complaint* alleges that N.C.W.C., Inc. violated Wisconsin’s telephone solicitor registration and telephone do-not-call registry requirements, Wis. Admin. Code § ATCP chapter 127, subchs. II and V, by

making telephone solicitations to Wisconsin telephone numbers without being registered to do so, and by making calls to numbers on the Do-Not-Call Registry. The *Complaint* alleges that these violations were committed by N.C.W.C, Inc. directly and, later, by third-party companies acting as agents for N.C.W.C., Inc.

2. N.C.W.C., Inc. has answered the *Complaint* and denies that it has violated any Wisconsin laws as alleged by the State.

3. The State of Wisconsin and N.C.W.C., Inc. waive all rights to appeal or otherwise challenge the validity of this *Consent Judgment*, but they do not waive their rights to seek enforcement of this *Consent Judgment* as provided herein.

II. DEFINITIONS

For the purpose of this *Consent Judgment*, the following definitions apply:

1. “Mail Solicitation” shall have the meaning set forth in Wis. Admin. Code § ATCP 127.30(2).

2. “Telephone Solicitation” shall have the meaning set forth in Wis. Admin. Code § ATCP 127.02(3).

3. “Current Vendor” and “Current Vendors” shall mean any person or company who, as of the date of entry of this *Consent Judgment*, is authorized to make Telephone Solicitations to Wisconsin telephone numbers

or to send Mail Solicitations to Wisconsin residents pursuant to an agreement, in any form, between that person or company and N.C.W.C., Inc.

4. “Future Vendor” and “Future Vendors” shall mean any person or company who enters into an agreement, in any form, with N.C.W.C., Inc. after the date of entry of this *Consent Judgment*, pursuant to which that person or company is authorized to make Telephone Solicitations to Wisconsin telephone numbers or to send Mail Solicitations to Wisconsin residents.

5. “Clearly and conspicuously” means that a disclosure required by this *Consent Judgment* is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in the following ways:

- a. By its size, contrast, location, and other characteristics, a printed disclosure must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- b. A printed disclosure must not be contradicted or mitigated by, or be inconsistent with, anything else in the communication.

6. “Close Proximity” means that the disclosure is very near the triggering representation. For example, a disclosure that appears in a footnote on the page where the triggering representation appears, or that

appears on a different page of the same solicitation, is not in close proximity to the triggering representation.

7. “DATCP” means the Wisconsin Department of Agriculture, Trade and Consumer Protection.

8. “DOJ” means the Wisconsin Department of Justice.

III. PERMANENT INJUNCTION

1. This injunction is entered pursuant to Wis. Stat. §§ 100.18(11)(d) and 100.20(6).

2. The terms of this injunction apply to N.C.W.C., Inc. and to all of N.C.W.C., Inc.’s current and future owners, officers, directors, and managers, and to any successor entities, whether by acquisition, merger or otherwise, to the extent that any of those entities operate a marketing business that markets automotive vehicle service plans to Wisconsin residents in any manner.

Required Actions Regarding Current Vendors

3. Within five business days of the date of entry of this *Consent Judgment*, N.C.W.C. shall notify each Current Vendor that it must cease all Telephone Solicitations on N.C.W.C.’s behalf to Wisconsin telephone numbers unless and until the Current Vendor is registered as a Telephone Solicitor with DATCP and has complied with the Do-Not-Call Registry requirements in Wis. Admin. Code § ATCP ch. 127, subch. V.

4. Within 10 business days of the date of entry of this *Consent Judgment*, N.C.W.C. shall require each Current Vendor to produce to N.C.W.C. a copy of its certificate of registration as a solicitor from DATCP prior to resuming making any Telephone Solicitations to Wisconsin telephone numbers.

5. Within 45 days of the date of entry of this *Consent Judgment*, N.C.W.C. will identify to DATCP any Current Vendor who has refused to comply with N.C.W.C.'s demand, or who is known to N.C.W.C. not to have complied..

Telephone Solicitor Requirements

6. N.C.W.C. shall not make any Telephone Solicitations to Wisconsin phone numbers unless registered with DATCP to do so at the time such Telephone Solicitations are made.

7. N.C.W.C. shall take all reasonable steps to ensure that all Future Vendors are registered with DATCP to make Telephone Solicitations at the time they are made, and in compliance with the Wisconsin Do-Not-Call Registry Requirements. These reasonable steps must include:

- a. Prior to any agreement between a Vendor and N.C.W.C, a personal conference between the Vendor and N.C.W.C.'s Director of Compliance or outside legal counsel, during which

the Vendor's compliance with Wisconsin's Telephone Solicitor Registration and Do-Not-Call laws is discussed.

- b. Requiring that the Vendor produce to N.C.W.C. a copy of the Vendor's registration certificate prior to entering into an agreement with the Vendor pursuant to which it will make telephone calls to Wisconsin numbers.
- c. Including express terms in any written agreement between N.C.W.C. and the Vendor providing the following:
 - i. That the Vendor must be registered with DATCP when the Vendor makes any Telephone Solicitations to Wisconsin telephone numbers.
 - ii. That failure of the Vendor to be registered with DATCP when making any Telephone Solicitations to Wisconsin telephone numbers is a material breach of the agreement with N.C.W.C.
 - iii. That N.C.W.C. will report to DATCP any failure of the Vendor to be registered as a Telephone Solicitor as required.
 - iv. That the Vendor must comply with the State Do-Not-Call Registry requirements in Wis. Admin. Code § ATCP ch. 127, subch. V if it makes any Telephone Solicitations to Wisconsin telephone numbers.
 - v. That failure of the Vendor to comply with the State Do-Not-Call Registry requirements in Wis. Admin. Code § ATCP ch. 127, subch. V is a material breach of the agreement with N.C.W.C.
 - vi. That N.C.W.C. will report to DATCP any failure of the Vendor to comply with the State Do-Not-Call Registry

requirements in Wis. Admin. Code § ATCP ch. 127, subch. V.

8. Starting 30 days after entry of this *Consent Judgment* and then annually for three years, N.C.W.C. must file a report with DATCP identifying all Vendors engaged in Telephone Solicitations to Wisconsin and any Vendor with whom N.C.W.C. ended its business relationship during the previous year due to the Vendor's non-compliance with paragraph 7(c) above. N.C.W.C. also will include in its report the identity of its Director(s) of Compliance or outside legal counsel who conducted conferences under paragraph 7(a) during the previous year.

Mail Solicitations

9. In any Mail Solicitation offering or promoting the sale of an extended vehicle service plan, N.C.W.C. shall Clearly and Conspicuously disclose:

- a. Its full name: "N.C.W.C., Inc." (or a trademarked name if the trademarked name is actively registered with the Wisconsin Department of Financial Institutions).
- b. Its address of its principal place of business as of the date of mailing.
- c. Placed in Close Proximity to the main product offer, the statement: "N.C.W.C., Inc. is not affiliated with any auto dealer or manufacturer."

10. In any Mail Solicitation offering or promoting the sale of an extended vehicle service plan, N.C.W.C. is prohibited from creating a misleading impression that N.C.W.C. has a pre-existing relationship with the

recipient of the Mail Solicitation or that N.C.W.C. is in possession of specific information about the recipient's automobile or current warranty coverage, including by using any of the following phrases:

- a. "Important Vehicle Information"
- b. "Our records indicate that you have not contacted us to get your service coverage up to date."
- c. "Activate this coverage on your vehicle."
- d. "Official Business."
- e. "Penalty for Private Use."
- f. "Notice."
- g. "Personal and Confidential."
- h. "Private and Confidential."
- i. "Customer Account #"
- j. "Customer Code"
- k. "Vehicle Protection Notice."
- l. "You can still activate protection."
- m. "We are informing you."

11. In any Mail Solicitation offering or promoting the sale of an extended vehicle service plan, N.C.W.C. is prohibited from creating a false impression that there exists an urgent need for the recipient of the Mail Solicitation to respond quickly by using any of the following phrases:

- a. "Final Notice"
- b. "Final Attempt to Notify"
- c. "Extremely Urgent"
- d. "Time Sensitive."
- e. "Expiration Date."
- f. "You may still have time."
- g. "Call immediately" (but "Please call immediately" is acceptable).

12. When a Wisconsin recipient of any N.C.W.C. Mail Solicitation contacts N.C.W.C., or any other person or company acting on behalf of N.C.W.C., prior to purchase in response to the Mail Solicitation, the telephone

agent shall orally reiterate to the recipient that N.C.W.C. is not the provider of the recipient's existing vehicle warranty coverage, if any, and that N.C.W.C. is not acting on behalf of the provider of the caller's existing vehicle warranty coverage, if any.

Notifications

13. Wherever this injunction requires N.C.W.C. to provide information or a notification to DATCP, the notice or information shall be communicated via email and mail or courier to the following:

Ms. Nicole Raisbeck
Enforcement Section Manager
Bureau of Consumer Protection
Wisconsin Department of Agriculture, Trade and
Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Email: Nicole.Raisbeck@wisconsin.gov

V. MONETARY JUDGMENT FOR CIVIL FORFEITURE AND MANDATED SURCHARGES AND ASSESSMENTS

1. Pursuant to Wis. Stat. §§ 100.26(4) and 100.26(6), judgment is entered in the amount of \$350,000 against N.C.W.C., Inc. However, upon payment by N.C.W.C., Inc. of \$200,000 to the Clerk of the Dane County Circuit Court ("Clerk"), the remainder of the judgment (\$150,000) shall be STAYED for a period of three (3) years or until a motion for default has been ruled on by this Court as provided for in Section VI herein. N.C.W.C., Inc.

shall pay the Clerk \$200,000 in five (5) payments of \$40,000 each, with the first payment due two business days after entry of this *Consent Judgment* and each of the next four (4) payments due by 32, 62, 92, and 122 days, respectively, after the date of entry of the *Consent Judgment*. If any of these deadlines falls on a weekend or a day when the Clerk's office is closed, the payment shall be due the next day when the Clerk's office is open.

2. If after three (3) years from the date of entry of this *Consent Judgment*, or after a motion for default filed within three (3) years has been denied by this Court, N.C.W.C., Inc. has not been found by the Court to be in Default of this *Consent Judgment* under Section VI herein, then the State shall file a Satisfaction of the stayed portion of the judgment, which shall have the effect of fully discharging N.C.W.C., Inc. from all additional liability under Section V.

3. If the Court finds N.C.W.C., Inc. in Default as provided in Section VI herein, then the stay shall immediately lift on the unpaid portion of the Judgment and shall be paid to the Clerk within 30 days of the Court's finding.

4. The Clerk shall apportion N.C.W.C.'s payment of \$200,000 identified in para. V.1. above, as follows:

- a) a civil forfeiture of \$131,470.06 pursuant to Wis. Stat. § 100.26(6);

- b) a penalty surcharge of \$34,182.22 pursuant to Wis. Stat. § 757.05 (26 percent of forfeiture);
- c) a consumer protection surcharge of \$32,867.52 pursuant to Wis. Stat. sec. 100.261 (25 percent of forfeiture);
- d) a jail surcharge of \$1,314.70 pursuant to Wis. Stat. § 302.46 (1 percent of forfeiture);
- e) a crime laboratories and drug enforcement surcharge of \$26.00 pursuant to Wis. Stat. § 165.755 (\$13 per count in the *Complaint*);
- f) a court fee of \$50 pursuant to Wis. Stat. § 814.63;
- g) a court support services surcharge of \$68 pursuant to Wis. Stat. § 814.85; and
- h) a justice information system surcharge of \$21.50 pursuant to Wis. Stat. § 814.86.

VI. DEFAULT PROCEDURE

1. The procedure set forth in this Section shall apply only to the determination of whether a default of N.C.W.C., Inc.'s obligations under Sections III.3, 4, 5, 6, 7(a), 7(b), 7(c), 8, 9, 10, 11, and 12 occurs during the three (3) years following entry of this *Consent Judgment*

2. If during the three (3) year period following the date of entry of this *Consent Judgment*, the State believes that N.C.W.C., Inc. has violated Section III.3, 4, 5, 6, 7(a), 7(b), 7(c), 8, 9, 10, 11, or 12, it may file a motion with the Court to find N.C.W.C., Inc. in default.

3. Prior to filing a motion under this section, the State shall give written notice N.C.W.C., Inc. identifying in detail the conduct, advertisement

or statement constituting the alleged default. N.C.W.C., Inc. shall have 10 business days to explain why a default has not occurred. If after such notice and response the State files a motion with the Court seeking a finding of default, the State shall have the burden of establishing non-compliance by clear and convincing evidence. The issue shall be determined by the Court without a jury.

4. If the Court finds N.C.W.C., Inc. in default, the Court may award the State its reasonable costs, including attorney's fees, incurred in bringing the motion.

VII. COSTS OF INVESTIGATION

Pursuant to Wis. Stat. §§ 93.20(2) and 100.263, N.C.W.C., Inc. shall pay the sum of \$11,225.05 within 30 days of the date of entry of this *Consent Judgment* to DOJ to reimburse the State of Wisconsin for its costs of investigation and prosecution of this action. Payment shall be made by bank wire transfer or by check as the parties shall arrange between them. Of the amount paid under this provision, DOJ shall remit \$3,968.80 to DATCP to reimburse it for its costs of investigation.

VIII. RELEASE

Pursuant to the parties' agreement, upon N.C.W.C., Inc.'s completion of the monetary obligations of this *Consent Judgment*, the State of Wisconsin releases and forever discharges N.C.W.C., Inc. and all of its past and present

owners, directors, divisions, principals, employees, officers, parents, predecessors, shareholders, subsidiaries, successors, assigns and transferees from the following: all claims, causes of action, damages, restitution, fines, costs, attorneys' fees, remedies, and/or penalties that were or could have been asserted against N.C.W.C., Inc. by the State of Wisconsin resulting from the conduct described in the *Complaint* filed in this action, from the beginning of time up to and including the date of entry of this *Consent Judgment*.

IX. NO EFFECT ON OTHER LEGAL RIGHTS AND OBLIGATIONS

1. Nothing in this *Consent Judgment* shall be construed to apply to, or affect, N.C.W.C., Inc.'s obligations to comply with all state and federal laws, regulations, or rules, or as granting N.C.W.C. permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

2. The *Consent Judgment* in this action shall not affect the private rights or remedies of any of N.C.W.C., Inc.'s customers.

X. MISCELLANEOUS

1. For three (3) years after entry of this *Consent Judgment*, N.C.W.C. must deliver a copy of this *Consent Judgment* to: (1) all owners, officers, directors and supervisory employees or agents of N.C.W.C.; and (2) the manager of any Vendor providing services in connection with the marketing of extended vehicle service plans to Wisconsin residents.

2. If any portion, provision, or part of this *Consent Judgment* is held to be invalid, unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions.

3. The parties understand this *Consent Judgment* shall not be construed as an approval of or sanction by DATCP, the Attorney General, DOJ, or the State of Wisconsin of N.C.W.C.'s business practices nor shall N.C.W.C. represent the judgment as such an approval.

4. The parties further understand that any failure by the State of Wisconsin or by DOJ or the Attorney General to take any action in response to any information which they now have in their possession and may believe forms the basis for a violation of this *Consent Judgment* shall not be construed as an approval of or sanction of any representations, acts, or practices indicated by such information, nor shall it preclude action thereon at a later date.

XI. CONTINUING JURISDICTION TO ENFORCE THIS CONSENT JUDGMENT

Jurisdiction is retained by the Court for the purpose of enabling any party to request enforcement of the terms of this *Consent Judgment* as permitted by law.

IT IS SO ORDERED.