13CV005840

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2013 APR 19 AM 8:46

13-CVS-_____

WAKE COUNTY, C.S.C.

BY_____

STATE OF NORTH CAROLINA, *ex rel.*
ROY COOPER, Attorney General,

Plaintiff,

v.

ADVANTAGE DEBT SOLUTIONS, INC.,
and ANTHONY KRYSINSKI,

Defendants.

COMPLAINT

From Article at GetOutOfDebt.org

I. INTRODUCTION

1. This is an action for injunctive relief to restrain the defendants from engaging in the illegal business of debt adjusting in violation of North Carolina state law, N. C. Gen. Stat. § 14-423, *et seq.*, from conducting unlawful telemarketing activities, from engaging in unfair and deceptive practices, N.C. Gen. Stat. § 75-1.1, and to obtain restitution and further relief.

2. The defendants are offering a deceptive and illegal debt settlement scheme to consumers in North Carolina. This scheme, which is prohibited by North Carolina law, purports to relieve consumers of their debt burdens by negotiating down their outstanding debt obligations. In fact, the defendants' debt settlement program operates as a classic advance fee scam, designed to extract up-front fees from financially-strapped consumers whether or not any useful services are performed. As shown below, in many instances, the defendants fail to obtain

settlements of consumers' debts, and consumers often end up in a far worse financial position.

II. PARTIES

3. Plaintiff State of North Carolina is acting through its Attorney General, Roy Cooper, pursuant to authority granted by Chapters 14, 75, and 114 of the North Carolina General Statutes.

4. Defendant Advantage Debt Solutions, Inc. (hereinafter "ADS") is a North Carolina corporation with a principal place of business in Charlotte, North Carolina.

5. Defendant Anthony Krysinski is a resident of Mecklenburg County, North Carolina and is the president of ADS. At all times material to this Complaint, defendant Krysinski has directed, controlled, participated in, and had knowledge of the illegal acts and practices of ADS as alleged in this Complaint. Defendant Krysinski has profited substantially from ADS' illegal activities.

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III. FACTUAL ALLEGATIONS

6. Since at least 2009, and continuing thereafter, the defendants have purported to offer "debt settlement" or "debt negotiation" services to financially distressed consumers in North Carolina and other states. As explained more fully below, the defendants purposefully prey upon unsophisticated consumers who are struggling with high amounts of unsecured debt, but who want to pay their creditors in good faith and avoid bankruptcy.

7. The defendants market their services through aggressive telemarketing calls. The defendants assure consumers that they have expertise in debt negotiation and regularly promise consumers that they can negotiate with creditors to substantially reduce consumers' credit card and other unsecured debt. The defendants represent that they can get consumers to be debt-free

in two or three years.

8. On its internet website at www.myadvantagedebt.com, defendant ADS promotes that it can "eliminate all credit card and unsecured debts in just 24-36 months." Defendant ADS further represents that it can help with creditor harassment, and provide assistance in "minimizing and eventually eliminating calls from the creditors."

9. When consumers enroll in the defendants' debt settlement program, the defendants and their agents expressly instruct the consumer to stop making any payments to his or her creditors. The defendants and their agents also instruct consumers to cease all communications with their creditors. In addition, the defendants and their agents advise consumers to send a change of address notification to their creditors and to list ADS's address and phone number as the consumer's new contact information, so that all creditor communications will be diverted to the defendants.

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10. If a consumer signs up for the defendants' program, the defendants require the consumer to provide ADS with authorization to debit the consumer's bank account on a monthly basis by automatic bank draft. In many instances, the defendants have charged consumers an initial "setup fee" of either $199.00 or $399.00 when consumers enter the defendants' program.

11. In addition to a "setup fee," the defendants charge consumers a steep "enrollment fee" to enroll in the defendants' debt settlement program, which the defendants collect in advance before settling consumers' debts. Typically, the defendants' contracts provide that the defendants will collect all of the consumer's first three monthly payments (after the collection of the "setup fee") or, alternatively, one-half of the consumer's first six monthly payments (for a total of three monthly payments) as the defendants' "enrollment fee." The defendants collect

these enrollment fees by directly debiting consumers' bank accounts themselves and by depositing the fees into a bank account controlled exclusively by the defendants. Further, the defendants collect these "enrollment fees" prior to settling consumers' debts.

12. In numerous instances, even after collecting a total of three months' payments from consumers as "enrollment fees," the defendants have continued to directly debit consumers' bank accounts and to designate these additional payments as defendants' "enrollment fees," even though such additional fees were not provided for in consumers' contracts and were not otherwise authorized by consumers.

13. In addition to a "setup fee" and an "enrollment fee," ADS also charges consumers a monthly "client support fee" of $49.00 per month, which is deducted from consumers' monthly payments.

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14. When consumers enroll in the defendants' program, consumers are required to authorize a third-party payment processor, Global Client Solutions, LLC ("GCS"), to debit the consumer's monthly payments from the consumer's bank account. These monthly payments are then deposited by GCS into a "special purpose account" in the consumer's name from which GCS, at the direction of ADS, disburses one or more payments to the consumer's creditor if and when ADS settles a consumer's debt. GCS charges consumers an initial account setup fee of $9.00, and a monthly fee of $8.35 for its services.

15. In almost all instances, however, GCS begins debiting consumers' bank accounts **only** after ADS has already collected its "enrollment fee" in full, and, as noted above, in some instances ADS collects and retains payments for itself in excess of its stated "enrollment fee." Thus, GCS begins to account for and disburse the consumer's funds only **after** ADS has already

directly debited and collected all of its "setup fee" and "enrollment fee," and sometimes additional unauthorized amounts.

16. Despite repeated requests from many consumers, ADS does not provide account statements to its customers. Instead, ADS's customers only receive account statements from GCS. Because ADS's "setup fees" and "enrollment fees" are collected directly by ADS and are collected by ADS **before** consumers are boarded onto GCS's system, the account statements consumers receive from GCS do not reflect the payments made by consumers directly to ADS. Because GCS's account statements do not reflect all payments made by consumers to ADS, consumers are often confused and misled by GCS's account statements and do not understand that ADS has appropriated almost all of their initial payments as ADS's fees.

17. In their telephone solicitations, the defendants lead consumers to believe that most of their payments will go directly to the consumers' creditors but in fact, the defendants do not attempt to negotiate with, or make payments to, creditors until the consumer has made payments for an extended period of time. As a result, because the defendants collect their fees up-front, often a consumer must remain in the defendants' program for a year or more and pay thousands of dollars in fees before any debt negotiation services are performed, if any are performed at all.

18. Even after paying substantial fees, consumers receive minimal services from the defendants. The defendants do not regularly communicate with their customers nor do they provide documentation or other information about communications with consumers' creditors. Despite the defendants' representations, consumers continue to be subject to regular collection calls and collection lawsuits. In fact, after enrolling in the defendants' program, consumers are at greater risk of being sued by their creditors because – at the direction of the defendants –

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consumers stop sending payments to their creditors and stop communicating with their creditors. Further, consumers' debts continue to increase with nonpayment due to accumulating interest and late charges.

19. Because the defendants often fail to render beneficial services to consumers, many consumers drop out of the defendants' program after a few months.

20. If consumers drop out of the defendants' debt settlement program, the defendants charge consumers a cancellation fee of $199.00. In most instances, when consumers terminate the defendants' program, the defendants refuse to provide consumers with refunds, and instead retain most, if not all, of consumers' funds whether or not the defendants have rendered any useful services. On information and belief, the defendants have retained substantially more of consumers' funds for the defendants' benefit than they have disbursed to consumers' creditors.

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21. Upon information and belief, contrary to their representations to consumers, the defendants and the defendants' employees have no training, experience or expertise in the areas of credit counseling, debt management, consumer finance or bankruptcy law.

22. In further support of the allegations of its Complaint, the State submits the affidavits of consumers Barbara Cook, Leigh Joiner, Shelley Plant, and Annie Reed, which have been filed in support of the State's Motion for a Temporary Restraining Order and a Preliminary Injunction, and are attached as Exhibits 1 through 4 thereto. These affidavits are illustrative of the defendants' unfair and deceptive practices in offering and conducting their debt reduction scheme.

23. As an example, Affiant Shelley Plant received a solicitation call from the defendants in the summer of 2010. The defendants' sales representative told her that ADS could

negotiate with her creditors to substantially reduce her $27,000.00 credit card debt and get her completely out of debt in about two years. Ms. Plant enrolled in the defendants' program in September 2010. Beginning in September 2010 and continuing through May 2011, the defendants directly drafted Ms. Plant's account on a monthly basis for a total of $3800.00 in advance fees. Beginning in February 2011 and continuing through October 2011, defendant's agent Global Client Solutions also collected a total of $840.00 by debiting Ms. Plant's checking account. None of the amounts collected by the defendants were disbursed to Ms. Plant's creditors.

24. In August 2011, Ms. Plant was sued by one of her creditors, Discover Bank, for the balance owed on her account. She then realized that the defendants had paid nothing on her Discover account. Despite informing ADS of the summons and complaint, she received no assistance from the defendants. After receiving no assurance or documentation that any other creditors were being paid, Ms. Plant told ADS she wished to cancel her contract and obtain a full refund. Despite her cancellation, GCS continued to draft her account. Ms. Plant eventually received a refund in the amount of $132.90 from GCS out of the total amount of $4240.00 that she paid for the defendants' program.

25. Similarly, affiant Annie Reed, who is a resident of Durham, North Carolina, and who is 84 years old, made payments totaling over $12,000.00 from December 2009 through June 2012 for the defendants' debt reduction program. Of this amount, only $1,945.00 was paid out as a partial settlement payment to one of Ms. Reed's creditors but the debt was not fully resolved. No other debts were settled and the defendants have retained as their fees the overwhelming majority of the funds paid in by Ms. Reed (approximately 78% of her payments).

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26. Although Ms. Reed was current on her credit accounts prior to enrolling in the defendants' program, she became delinquent after submitting payments to the defendants instead of her creditors. As a result, she began to receive regular collection calls and notices. When she realized that her debts were not being resolved and her creditors were not being paid, Ms. Reed repeatedly requested an accounting from the defendants but the defendants failed to provide information as to the status of her payments until she retained an attorney to make a formal demand. Despite Ms. Reed's request to cancel her contract in July 2012 and obtain a refund, the defendants have failed to pay any refund.

27. The defendants have collected large amounts of money from consumers throughout the country, including numerous North Carolina residents, for their purported debt settlement services. On information and belief, as of July 2012, North Carolina consumers had paid in approximately $140,000.00 to defendants' debt settlement program, out of which the defendants had retained over $70,000.00 as their fees. Further, upon information and belief, as of July 2012, while the defendants have operated their business from one or more locations in North Carolina, the defendants have collected approximately $1,000,000.00 from out-of-state consumers, out of which the defendants have retained over $640,000.00 as the defendants' advance fees for their purported debt settlement services.

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IV. CLAIMS FOR RELIEF

COUNT I
VIOLATIONS OF THE NORTH CAROLINA DEBT ADJUSTING ACT: N.C. GEN. STAT. § 14-423, *et seq.*

28. The State realleges and incorporates herein the allegations of paragraphs 1 through 27 above.

29. The defendants are engaged in illegal "debt adjusting" services as that term is defined in Article 56 of Chapter 14 of the North Carolina General Statutes. Specifically, N.C. Gen. Stat. § 14-423(2) defines "debt adjusting" in pertinent part:

> "Debt adjusting also includes the business or practice of debt settlement ... whereby any person holds himself or herself out as acting for consideration as an intermediary between a debtor and the debtor's creditors for the purpose of reducing, settling, or altering the terms of the payment of any debt of the debtor, whether or not the person distributes the debtor's funds or property among the creditors, and receives a fee or other consideration for reducing, settling, or altering the terms of the payment of the debt in advance of the debt settlement having been completed or in advance of all the services agreed to having been rendered in full."

30. The activity of "debt adjusting" is prohibited by N.C. Gen. Stat. § 14-424, which provides that "[i]f any person shall engage in, or offer to or attempt to, engage in the business or practice of debt adjusting ... he shall be guilty of a Class 2 misdemeanor."

31. The defendants' offering and purported rendering of "debt settlement" or "debt negotiation" services to North Carolina consumers violates North Carolina's debt adjusting statute in that (1) the defendants have engaged, and are engaging in the business of debt settlement in which the defendants offer to act, for consideration, as an intermediary between consumer debtors and their creditors for the purpose of negotiating, settling, or altering the terms

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of payment of debts; and (2) the defendants receive advance fees from consumers before the completion of the defendants' purported services.

32. Pursuant to N.C. Gen. Stat. § 14-425, the State is entitled to injunctive relief to restrain the defendants from further violations of the law and to the recovery of all sums unlawfully collected by the defendants from North Carolina debtors.

COUNT II
VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT: N.C. GEN. STAT. § 75-1.1

33. The State incorporates herein by reference paragraphs 1 through 32 above.

34. In the course of soliciting and promoting their "debt settlement" or "debt negotiation" services to consumers, in entering into agreements with consumers to provide such purported services, and in purporting to render such services, the defendants have engaged in unfair and deceptive acts and practices in trade or commerce in violation of N.C. Gen. Stat. § 75-1.1.

35. The defendants' unfair or deceptive acts and practices include, but are not limited to, the following:

(A) Engaging in illegal debt adjusting activities prohibited by North Carolina law;

(B) Making deceptive and misleading representations to consumers, including but not limited to the following:

(i) Falsely representing that the defendants' debt settlement program is highly successful, that the defendants can "eliminate" consumers' credit card debt, and that the defendants' customers

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will become debt-free in two to three years;

(ii) Falsely representing that the defendants will protect consumers from collection harassment and other collection actions;

(iii) Representing that the defendants have special expertise in debt settlement or debt negotiation, when the defendants have no such special expertise, and consumers are more likely to obtain reduced settlements with their creditors through their own efforts than through the defendants' efforts, if any;

(iv) Failing to adequately inform consumers that negotiation and debt settlement activities will be delayed for many months after consumers' enrollment due to the defendants' practice of "front-loading" the collection of defendants' fees, which prevents consumers from accumulating sufficient funds with which to pay their creditors;

(v) Failing to adequately inform consumers of the amount of the defendants' fee, and failing to inform consumers that the defendants collect their fees up-front before beginning any "debt settlement" services on behalf of consumers;

(vi) Representing to consumers that the defendants will keep consumers informed of defendants' actions on consumers' behalf, and representing that the defendants are available to respond to consumers' inquiries; when the defendants typically do not provide

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consumers with information about consumers' accounts or with information about the defendants' actions on consumers' behalf, if any;

(vii) Failing to inform consumers that some creditors refuse to negotiate with the defendants;

(viii) Failing to adequately inform consumers that they face a higher degree of risk of being sued by their creditors as a direct result of their participation in the defendants' program due to the defendants' instructions to consumers to cease making payments to their creditors;

(ix) Failing to adequately inform consumers that their debts may significantly increase as a direct result of their participation in the defendants' program because of creditors' assessment of finance charges, late fees, and other fees due to the defendants' instructions to consumers to cease making payments to their creditors; and

(x) Representing to consumers that they will be able to obtain a refund if consumers terminate the program; when, in fact, very few consumers have obtained refunds when they terminated.

(C) Offering and engaging in a debt settlement scheme that is unfair and substantially injurious to consumers, in that, among other things:

(i) The defendants charge exorbitant fees for their purported "services," which fees the defendants collect up-front and retain for

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their own benefit, while providing only token services for consumers;

(ii) The defendants advise consumers to cease paying legal obligations to their creditors, thereby leading consumers to be further delinquent on their credit obligations and subject to increasing interest and default charges;

(iii) The defendants fail to advise consumers or otherwise account for the services they are purportedly rendering and fail to account for all the funds they have collected from consumers; and

(iv) The defendants perpetrate a program that is substantially deleterious to the credit standing and the economic and legal standing of consumers.

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36. Further, the defendants have engaged in violations of the federal Telemarketing Sales Rule, 16 C.F.R. Part 310, governing sales of debt relief services by, among other actions,

(A) Failing to make express disclosures to consumers required by 16 C.F.R. § 310.3(a)(1)(viii) in the defendants' sale of debt relief services, including but not limited to:

(i) the amount of time necessary to achieve the represented results and the time by which the defendants will make a bona fide settlement offer to consumers' creditors;

(ii) the amount of money or the percentage of each outstanding debt that the customer must accumulate before the defendants will make

bona fide settlement offers to consumers' creditors; and

(iii) that consumers' use of the defendants' debt settlement program will likely affect the consumer's creditworthiness, may result in the consumer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest.

(B) Making misrepresentations regarding material aspects of the defendants' debt settlement services, in violation of 16 C.F.R. § 310.3(a)(1)(x); and

(C) Collecting advance fees from consumers prior to the defendants' settlement of consumers' debts, in violation of 16 C.F.R. § 310.4(a)(5).

The defendants' violations of the federal Telemarketing Sales Rule are unfair and deceptive practices and constitute violations of North Carolina's Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1.

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COUNT III
VIOLATIONS OF THE NORTH CAROLINA TELEPHONIC SELLER REGISTRATION ACT: N.C. GEN. STAT. § 66-260, *et seq.*

37. The State incorporates herein by reference paragraphs 1 through 36 above.

38. North Carolina's Telephonic Seller Registration Act, N.C. Gen. Stat. §§ 66-260 and 66-261, requires that any non-exempt person engaged in telephonic solicitations directed to North Carolina consumers to purchase goods or services or that is engaged in telephonic solicitations from locations in North Carolina:

(A) Register with the North Carolina Secretary of State not less than 10 days before commencing telephone solicitations;

(B) Provide specified information on a form provided by the North Carolina Secretary of State, which must include all of the following information, and must contain the notarized signature of each principal of the telephonic seller:

(i) the name under which the telephonic seller is doing business in the State;

(ii) the telephonic seller's business form and place of organization and copies of its articles of incorporation;

(iii) the complete street address of the telephonic seller's principal place of business;

(iv) the complete street address of each location from which telephone solicitations are placed by the telephonic seller;

(v) a listing of all telephone numbers to be used by the telephonic seller, and the complete street address of the business premises served by each number;

(vi) the name and title of each principal;

(vii) the complete street address of the residence of each principal, and the principal's date of birth;

(viii) the name, street address, and date of birth of any employee or agent responsible for the operational management and supervision of facilities from which telephonic sales calls are made or received, and the person's full employment history for the preceding two

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years;

(ix) the name and address of all banks or savings institutions where the telephonic seller maintains deposit accounts;

(x) the name and address of each long-distance telephone carrier used by the telephonic seller;

(xi) a summary of each civil or criminal proceeding brought against the telephonic seller, any of its principals, or any of its employees or agents with supervisory responsibilities during the preceding five years by federal, State, or local officials relating to telephonic sales practices; and

(C) Pay a $100.00 filing fee.

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39. Pursuant to N.C. Gen. Stat. § 66-261(c), a registration of a telephonic seller is valid for one year from the effective date of the provision of all required information, and may be renewed annually by making the filing required by N.C. Gen. Stat. § 66-262, and paying the filing fee of $100.00.

40. N.C. Gen. Stat. § 66-266(a) provides that any violation of the Telephonic Seller Registration Act "shall constitute an unfair and deceptive trade practice in violation of N.C. Gen. Stat. § 75-1.1."

41. Pursuant to N.C. Gen. Stat. §§ 66-266(b), in an action by the Attorney General against a telephonic seller for violation of the Telephonic Seller Registration Act, or for any other act or practice by a telephonic seller constituting a violation of N.C. Gen. Stat. § 75-1.1, the court may impose civil penalties of up to $25,000 for each violation involving North Carolina

purchasers or prospective purchasers who are 65 years of age or older.

42. N.C. Gen. Stat. § 66-266(c) further provides that the remedies and penalties available under the section "shall be supplemental to others available under the law, both civil and criminal."

43. The defendants are a telephonic seller as defined in N.C. Gen. Stat. § 66-260(11), as the defendants have caused directly, or through salespersons, telephone solicitations or attempted telephone solicitations to occur, and the defendants are not exempt from the Act.

44. The defendants have engaged in violations of the Telephonic Seller Registration Act, N.C. Gen. Stat. § 66-260, *et seq.*, by failing to register with the North Carolina Secretary of State as a telephonic seller; by failing to provide the North Carolina Secretary of State with the information mandated by N.C. Gen. Stat. § 66-262; by failing to pay the filing fee of $100.00; and by failing to register in each year the defendants have engaged in telephonic solicitations.

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PRAYER FOR RELIEF

WHEREFORE, the State of North Carolina prays the Court for the following relief:

A. That the defendants, their members, officers, employees, and agents be temporarily restrained and preliminarily and permanently enjoined from:

(1) Advertising, offering, soliciting, or entering into contracts for unlawful debt adjusting services, including debt settlement or debt negotiation services, in violation of North Carolina's Debt Adjusting Act, N.C. Gen. Stat. §§ 14-423, 14-424;

(2) Soliciting or collecting any monies from consumers for debt adjusting services, in violation of the Debt Adjusting Act, N.C. Gen. Stat. § 14-423,

14-424; and

(3) Engaging in unfair or deceptive trade practices in the offering or conduct of their debt settlement or debt negotiation services, in violation of N.C. Gen. Stat. § 75-1.1;

B. That a receiver be appointed pursuant to N.C. Gen. Stat. § 14-425 to gain control of assets received and retained by defendants as a result of their unlawful debt adjusting activities in this State;

C. That the defendants be ordered to refund all sums collected from consumers resulting from the defendants' violations of the Debt Adjusting Act and N.C. Gen. Stat. § 75-1.1, pursuant to N.C. Gen. Stat. §§ 14-425 and 75-15.1;

D. That the defendants' existing agreements or contracts with consumers be cancelled pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15.1;

E. That the defendants be ordered to comply with the Telephonic Seller Registration Act, N.C. Gen. Stat. 66-260, *et seq.*;

F. That the defendants be ordered to pay appropriate civil penalties pursuant to N.C. Gen. Stat. §§ 75-15.2 and 66-266(b);

G. That the State be awarded costs of this action and reasonable attorneys' fees; and

H. That the Court award such other and further relief as may be just and proper.

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This the 19th day of April, 2013.

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

VERIFICATION

David C. Evers, being first duly sworn, deposes and says:

That he is a Consumer Protection Specialist employed by the North Carolina Department of Justice and that he is authorized to make this Verification; that he assisted in the Department of Justice's investigation of the named defendants; that he has read the foregoing Complaint, and that upon his information and belief, the matters and things alleged therein are true.

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David C. Evers 4/17/2013

David C. Evers Date
Consumer Protection Specialist

Sworn and subscribed before me

this 17th day of April, 2013.

Jennifer Y. Chavis
Notary Public

JENNIFER Y CHAVIS NOTARY PUBLIC HARNETT COUNTY, NC

My Commission Expires: 4/3/2016