

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 11-CX-06

FIRST AMERICAN FUNDING
COMPANY, LLC
N4365 Highway 73
Columbus, WI, 53925,

Complex Forfeiture: 30109

Defendant.

CONSENT JUDGMENT

Based on the Complaint filed in this matter, and on the attached Stipulation for Entry of Consent Judgment, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Stipulation for Entry of Consent Judgment is approved and its terms are made a part of this Judgment.
2. This court has jurisdiction over the parties.
3. Defendant First American Funding Company, LLC (“First American”), is a Wisconsin corporation with its principal offices at N4365 Highway 73, Columbus, Wisconsin. First American is engaged in the business of marketing and selling residential loan mortgages, and as part of its marketing of those products it engages in telephone solicitation of Wisconsin residents.
4. First American was the subject of an investigation by the Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) which investigation was referred to

the Wisconsin Department of Justice (“DOJ”). DOJ brought this action, alleging that First American violated various provisions of Wis. Stat. § 100.52 and the DATCP rules promulgated thereunder; and Wis. Adm. Code §§ 127.04, 127.14 & 127.16 .

INJUNCTION

5. For the purposes of this Consent Judgment, all of the definitions found in Wis. Stat. § 100.52(1) and in Wis. Admin. Code §§ ATCP 127.01 and ATCP 127.80 are incorporated herein by reference. "No-call list" means the nonsolicitation directory that is provided or made available to the telephone solicitor under Wis. Stat. § 100.52(2)(d).

6. The terms of this injunction applicable to First American shall also apply to First American’s employees, agents, owners, officers, successors and assigns.

7. Pursuant to Wis. Stat. § 100.52(9), First American is hereby permanently enjoined and restrained from failing to comply with the applicable provisions of Wis. Stat. § 100.52, as it is currently written or as it is amended in the future, including from making any telephone solicitation to a residential customer whose telephone number appears on the current no-call list in violation of Wis. Stat. § 100.52(4)(a)2., unless one of the exceptions in Wis. Stat. § 100.52(6) applies.

8. Pursuant to Wis. Stat. § 100.52(9), First American is permanently enjoined and restrained from failing to comply with the applicable provisions of Subchapter V, of Wis. Admin. Code Chapter ATCP 127, as it is currently written or as it is amended in the future, including, without limitation because of enumeration, making any telephone solicitation, either directly or through an employee or agent, to a residential telephone customer whose telephone number appears on the current no-call list, in violation of Wis. Admin. Code §§ ATCP 127.82(2) and ATCP 127.83(2)(a).

9. The Parties acknowledge that First American has obtained a Telephone Solicitation Registration from DATCP that is conditioned upon compliance with this Consent Judgment. First American shall develop a written action plan for achieving such compliance (“Compliance Plan”), shall within 60 days of the entry of this Consent Judgment submit the plan to DATCP for review and approval, and shall follow such plan unless DATCP approves a modification of the plan.

10. First American’s Compliance Plan shall initially include at least the following three measures, or substantially similar measures:

(a) Acquiring or utilizing, for marketing purposes, only potential customer lists that have been pre-scrubbed against the Wisconsin no-call list.

(b) Properly utilizing the no-call list scrubbing feature in its Spitfire dialer software; and

(c) Properly utilizing industry recognized software, in addition to the do not call functionality of the Spitfire dialer, the function of which is to prevent the completion of calls to telephone numbers on the Wisconsin no-call list.

11. First American may at any time submit an updated Compliance Plan for approval by DATCP that eliminates one or more of the measures identified in Paragraphs 10 (a) – (c), so long as the remaining measure or measures can be reasonably expected to ensure First American’s compliance with Wis. Admin. Code §§ ATCP 127.82(2) and ATCP 127.83(2)(a).

12. For each of the 12 calendar quarters following the execution of this Consent Judgment (altogether, the “Verification Period”), First American shall provide to DATCP its

complete telephone records in sortable, electronic format (preferably in Microsoft Excel format) identifying all calls made from the telephone numbers used by it or anyone on its behalf for telemarketing to Wisconsin residents. The first set of telephone records (for the calendar quarter ending September 30, 2011) shall be provided on or before October 20, 2011 (and need only include call data beginning August 1, 2011), with the records for the subsequent 11 calendar quarters being provided on or before the 20th calendar day following the end of the preceding calendar quarter.

13. If, during the Verification Period, DATCP determines that the telephone records provided by First American demonstrate that more than 0.5 percent of the telephone calls made during any calendar month (beginning with August, 2011) violated the provisions of Wis. Stat. § 100.52(4)(a)2. and/or Wis. Admin. Code § ATCP 127.82(2) (hereinafter collectively referred to as a “Compliance Failure”), then DATCP shall notify First American in writing of its determination.

14. First American shall have 10 calendar days from the receipt of a DATCP notice of a Compliance Failure to submit evidence to DATCP for the purpose of demonstrating that there was not, in fact, a Compliance Failure. If, despite the evidence submitted, DATCP determines that there was a Compliance Failure, it shall so notify First American and First American, and if so directed by DATCP, shall immediately cease all telemarketing to Wisconsin residents. Such telemarketing may not thereafter be recommenced unless the state consents or the Court grants a motion made by First American for permission to recommence telemarketing.

15. For purposes of determining whether there is a Compliance Failure, any telephone call to a number on the then-current Wisconsin no-call list will be prima facie evidence of a violation and counted toward the 0.5 percent standard. First American shall have the burden of

demonstrating that any such call is not a telephone solicitation or otherwise not a violation of the applicable rules or statutes.

16. First American shall pay all fees associated with its Telephone Solicitor Registration when due, and shall not engage in any telephone solicitations, as defined in Wis. Stat. § 100.52(1)(i), without being registered.

17. First American shall, within 30 days of entry of this Consent Judgment, provide a copy of this Consent Judgment to every person who engages in marketing activity on behalf of or in association with First American, and any person who is responsible for the operation, configuration or maintenance of First American's dialer system.

18. First American is permanently enjoined from violating, or knowingly assisting in the violation of, the telephone solicitation provisions of Subchapter II of Wis. Admin. Code Ch. ATCP 127, and is specifically enjoined from the following conduct in the course of any telephone solicitations:

a. Failing to make the disclosures required by Wis. Admin. Code § ATCP 127.04(1) in a telephone solicitation before asking any questions or making any statements other than an initial greeting. Specifically, the First American employee, agent or representative shall clearly and explicitly state that the call is being made by First American Funding for the purpose of offering a specific product or service, which shall be specifically identified, and shall identify the name of the caller, subject to Wis. Admin. Code § ATCP 127.04(2), and

b. Making any false, deceptive or misleading representation, including but not limited to representing or implying any of the following:

1. that First American is a local bank;
2. that First American is calling on behalf of, represents, or is recommended by HUD or FHA or any other governmental or third-party organization;
3. that the purpose of the call is to conduct a survey or for any other purpose than the solicitation of the purchase of products or services offered by First American; or
4. that the call concerns a possible problem with the consumer's existing mortgage; or that First American is affiliated with or represents the consumer's existing mortgage lender or servicer.

19. To effectuate First American's compliance with the requirements of Paragraph 18, First American shall include in the Compliance Plan submitted to DATCP pursuant to Paragraph 9, provisions that require, at a minimum:

- a. The use of solicitation scripts for the purpose of ensuring consistency and compliance with this Consent Judgment and all applicable law by all persons engaged in solicitation activities on behalf of First American;
- b. The development of a training manual and a training program designed to instruct all relevant employees or agents on the requirements of the law and this Consent Judgment;
- c. Maintenance of a system to log, record and store all consumer complaints (whether written or oral) about First American's business practices or activities, and First American's response to such complaints;
- d. A program to randomly monitor solicitation calls made by representatives of First American;

e. Establishment and implementation of a policy of corrective action and discipline to ensure proper conduct by First American employees or representatives; and

f. Retention of all scripts, training manuals, complaints, for a period of at least five years.

20. First American shall provide copies of all documents or records to the state within 10 calendar days of a request for such documents or records.

21. In the event the state brings an action for violations of Subchapter II of Wis. Admin. Code ch. 127, alleging that First American committed violations of Subchapter II during the thirty-six (36) month period following entry of this Consent Judgment, it may add claims for violations of Subchapter II which occurred prior to entry of this Consent Judgment. In the event a court of competent jurisdiction adjudicates First American to have committed such violations during the thirty-six (36) month period following entry of this Consent Judgment, the state shall be entitled to receive all relief afforded by law, including forfeitures, for violations of Subchapter II which the court adjudicates to have occurred prior to the date of entry of this Consent Judgment.

CIVIL FORFEITURES

22. JUDGMENT is hereby entered against defendant First American Funding Company, LLC, in the amount of \$750,000.00 for civil forfeitures, surcharges and attorneys fees pursuant to the statutes cited in paragraph 26.

23. To satisfy the monetary portion of this Judgment, First American shall, subject to adjustments set forth in Paragraph 24 below, make 36 consecutive monthly payments of \$4,000.00, for a total of \$144,000.00 (the "Settlement Amount"). First American will pay the

Settlement Amount in monthly installments of \$4,000 for 36 months (the “Payment Term”), with the first payment due on October 1, 2011.

24. Beginning January 2012, and upon the expiration of each six month period thereafter until the end of the Payment Term, First American’s monthly payment (and thereby the Settlement Amount) shall be prospectively adjusted, as follows, on the basis of First American’s previous six months of gross revenues.

Previous Six Months Gross Revenues	Monthly Payment For Subsequent Six Months
Below \$3,000,000	\$4,000
\$3,000,000 - \$3,500,000	\$5,000
\$3,500,000 - \$4,000,000	\$6,000
Above \$4,000,000	\$8,000

For purposes of this paragraph, First American shall disclose its revenues in a manner acceptable to the state. Except where First American is required to pay the full amount of judgment pursuant to Paragraph 27, First American’s total liability during the Payment Term shall not exceed \$250,000, notwithstanding any adjustments required under this paragraph.

25. If, due to circumstances beyond its control, First American finds itself unable to meet the payment requirements in Paragraphs 23 – 24, the Parties will attempt to negotiate an adjustment of the Settlement Amount or the Payment Term. First American is obligated to

comply with the payment requirements in Paragraphs 23-24 unless the state consents to an adjustment or First American obtains a Court order modifying its obligation.

26. The Settlement Amount of \$144,000 shall be comprised of and allocated to the following, with adjustments in such allocations to be made in the sole discretion of the state for additional amounts that may be paid pursuant to Paragraphs 24 or 27:

- (a) \$81,470.07 in civil forfeitures for violations of Wis. Admin. Code §§ ATCP 127.81 & 127.82, and Wis. Stat. §§ 100.52, pursuant to Wis. Stat. § 100.52(10);
- (b) A consumer protection surcharge of \$20,367.52, pursuant to Wis. Stat. § 100.261 (25 percent of forfeiture);
- (c) A penalty surcharge of \$21,182.22 pursuant to Wis. Stat. § 757.05 (26 percent of forfeiture);
- (d) A jail surcharge of \$814.70, 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;
- (f) A court fee of \$50.00, pursuant to Wis. Stat. § 814.63;
- (g) A court support services surcharge of \$68.00, pursuant to Wis. Stat. § 814.85;
- (h) A justice information system surcharge of \$21.50, pursuant to Wis. Stat. § 814.86;
and
- (i) A payment of \$20,000.00 for the costs of investigation and prosecution, pursuant to Wis. Stat. §§ 100.263 and 814.04, including \$1,350.00 for reimbursement of the Wisconsin Department of Agriculture, Trade and Consumer Protection for its

enforcement costs incurred in the preparation and prosecution of this action, pursuant to Wis. Stat. §93.20(2).

27. First American shall be subject to the full judgment amount of \$750,000, less any amounts First American has paid during the Payment Term if, during the Payment Term, it commits a Compliance Failure or otherwise materially violates the terms of this Consent Judgment. Nothing in this paragraph is intended to limit the right of First American or the state to seek enforcement of the terms of this Consent Judgment pursuant to paragraph 36. Nor shall this paragraph be construed to limit the state's discretion to accept less than the full judgment amount in the case of a Compliance Failure. The submission of 3 or more monthly payments more than five days after their due date shall constitute a material violation of this Consent Judgment.

28. First American shall make the first five monthly payments of \$4,000 each (beginning October 1, 2011) by means of checks payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General John Greene at the following address:

Assistant Attorney General John S. Greene
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7857
Madison, Wisconsin 53707-7857;

29. Beginning with the sixth payment (due March 1, 2012), unless otherwise directed by the Wisconsin Department of Justice, First American shall submit all subsequent payments by checks payable to the Dane County Clerk of Court and delivered to the Dane County Clerk of Court at the following address:

Dane County Clerk of Court
215 South Hamilton Street
Madison, WI 53703

30. Each monthly payment must be made by the first day of each month, beginning with the first calendar month following entry of this Consent Judgment.

31. If, during the Payment Term, First American has complied with all of the terms of this Consent Judgment, the state shall, within 30 days after the end of the Payment Term, execute and file with the Dane County Clerk of Circuit Court a satisfaction of the monetary portion of the judgment.

EFFECT OF JUDGMENT AND CONTINUING JURISDICTION

32. Nothing contained in this Consent Judgment shall be construed to deprive any customer, consumer or other person or entity of any private right under the law.

33. Nothing in this Consent Judgment shall be construed to limit the authority of the State of Wisconsin, the Wisconsin Department of Justice, the Wisconsin Department of Agriculture, Trade and Consumer Protection or any other agency or department of the State of Wisconsin to enforce any and all laws, regulations or rules against First American, except that this Consent Judgment shall serve as full and final adjudication of any claim by any agency or department of the State of Wisconsin that First American violated Wis. Stat. 100.52 or any related administrative rules for any time prior to the date of this Consent Judgment.

34. In the event a Court finds that First American has made misrepresentations in violation of paragraph 18(b) during the period between September 1, 2011 and the time First American satisfies the monetary portion of the Judgment, First American agrees that the state will be entitled to a forfeiture of no less than \$5000 for each violation committed during that

period, pursuant to Wis. Stat. § 100.26(6). Nothing in this paragraph shall limit the state's discretion to seek a lesser forfeiture.

35. This Consent Judgment does not constitute approval by the State of Wisconsin, or any of its subdivisions, officials or employees, of any of First American's advertising, products or practices, and First American shall make no representation to the contrary.

36. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this proceeding to apply to this Court for any other such further orders and directions as may be necessary and appropriate for the enforcement of, or compliance with, this Consent Judgment.

THIS IS A FINAL ORDER/JUDGMENT FOR PURPOSES OF APPEAL UNDER WIS. STAT. § 808.03(1).

Dated at Madison, Wisconsin, this _____ day of September, 2011.

BY THE COURT:

Dane County Circuit Court Judge