


FILED
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CIRCUIT COURT OF OREGON
FOR LANE COUNTY
BY 

CIRCUIT COURT OF OREGON
LANE COUNTY

IN THE MATTER OF:
DERRICK E. MC GAVIC, KRISTAN FINNEY
and MCGAVIC & FINNEY, P.C. formerly,
DERRICK E. MC GAVIC, P.C.,
Respondents.

Case No. 16-11-05501
ASSURANCE OF VOLUNTARY
COMPLIANCE

1.

DERRICK E. MC GAVIC, KRISTAN FINNEY, and MCGAVIC & FINNEY, P.C.,
formerly DERRICK E. MC GAVIC, P.C., have recently done business in Oregon and are the
respondents herein. This agreement is between respondents and the Oregon Department of
Justice (DOJ) acting pursuant to ORS 646.632.

2.

The DOJ commenced an investigation into alleged violations of ORS 646.607 and
646.608 by respondents. The DOJ and respondents have agreed to resolve all their disputes on
the terms set forth in this Assurance of Voluntary Compliance (AVC). In exchange for the
agreed upon remedies set forth below, the DOJ agrees, on behalf of the State of Oregon, that
upon court approval, DOJ will be deemed to have released and discharged respondents, their
respective officers, directors, agents, employees and heirs, from any and all liability and claims
for alleged or possible violations of Oregon's Unlawful Trade Practices Act (the Act), including
violations of Oregon's Unlawful Debt Collection Practices Act, arising out of respondents'
business activities through the date that the court approves this AVC.

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1 PROCEDURE

2 3.

3 This AVC is a settlement of a disputed matter. It shall not be considered an admission
4 by respondents of a violation of the Act for any purpose. Respondents and DOJ agree that no
5 provision of the AVC operates as a penalty, forfeiture, or punishment under the Constitution of
6 the United States, under the Constitution of the State of Oregon, or under any other provision of
7 law.

8 4.

9 Respondents waive receipt of a notice from the State of Oregon pursuant to ORS
10 646.632(2) of the alleged unlawful trade practices and the relief to be sought.

11 5.

12 Respondents understand and agree that this AVC applies to respondents, their principals,
13 officers, directors, agents, employees, representatives, successors and assigns, severally, but not
14 jointly while acting personally, or through any corporation or other business entities, whose
15 acts, practices or policies are directed, formulated or controlled by either respondent.

16 6.

17 Respondents and respondents' attorneys agree and understand that following acceptance
18 of the AVC by DOJ, DOJ may initially communicate directly with either respondent for the
19 purpose of executing and enforcing the terms of this agreement, resolving future complaints,
20 and conducting undercover investigations of respondents, but that if DOJ is notified by a
21 respondent that he or she has retained counsel regarding any of these purposes DOJ must
22 communicate only with such attorneys as identified by such respondent unless otherwise agreed
23 in writing.

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7.

Respondents understand and agree that the DOJ will submit this AVC to the Circuit Court of the State of Oregon for Lane County for approval, and, if approved, will be filed with the court pursuant to ORS 646.632(2).

8.

Respondents waive any further notice of submission to and filing with the court of this AVC. Respondents agree to accept service of a conformed or court certified copy by prepaid first class mail sent to the addresses following their respective signatures.

9.

Pursuant to ORS 646.632(2), if the monies required to be paid by this AVC are not paid timely, DOJ may convert the AVC to a money judgment against Respondent Derrick E. McGavic only under ORS 646.632(2) without prior notice to him. Respondent Derrick E. McGavic agrees a copy of the money judgment may be sent to him, first class mail to the address following his signature.

10.

Respondents understand that, in addition to the remedies set forth in this AVC, violation of any of the terms of this AVC may result in contempt of court proceedings, civil penalties of up to \$25,000 for each violation, and such further relief as the court may deem appropriate. ORS 646.632(4), ORS 646.642(1) and ORS 646.642(2).. Respondents do not waive their right to contest or defend any such future proceedings.

11.

The parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the parties. The parties further acknowledge that this AVC constitutes a single and entire agreement that is not severable or divisible, except that if

1 any provision herein is found to be legally insufficient or unenforceable, the remaining
2 provisions shall continue in full force and effect.

3 **DEFINITIONS**

4 12.

5 “Creditor” shall mean a person or entity who offered or extended credit creating a debt
6 regarding a consumer transaction. It shall not include any person or entity to the extent that he
7 receives an assignment or transfer of a debt in default solely for the purpose of facilitating
8 collection of such debt.

9 “Debt Collector” shall mean any person or entity whose principal purpose of which is
10 the collection of any debts, who regularly collects or attempts to collect, directly or indirectly,
11 debts owed or due or asserted to be owed or due another, or who receives an assignment or
12 transfer of a debt in default solely for the purpose of facilitating collection of such debt. A debt
13 collector cannot also be a creditor.

14 **REMEDIES**

15 13.

16 Respondents shall obey Oregon's Unlawful Trade Practices Act, ORS 646.605 to ORS
17 646.656, Oregon's Unlawful Debt Collection Practices Act, ORS 646.639 to ORS 646.643, and
18 OAR 441-810-0000 to 441-810-0260.

19 14.

20 Respondents shall not represent or imply that DOJ acquiesces or approves of
21 respondents' past business practices, current efforts to reform their practices, or any future
22 practices which respondents may adopt or consider adopting. DOJ's decision to settle this
23 matter and to otherwise unilaterally limit current or future enforcement action does not
24 constitute approval or imply authorization for any past, present, or future business practice.

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15.

Respondent Derrick E. Mc Gavic shall be required to pay the sum of \$70,000.00 for deposit to the Department of Justice Account established pursuant to ORS 180.095 to be used by DOJ as provided by law. Respondent Derrick E. Mc Gavic shall tender this payment along with his signature on this AVC and by its signature DOJ will acknowledge receipt. The payment will be deposited in the DOJ's client trust account and will not be disbursed until the Court approves this AVC. If the AVC is not approved, DOJ will promptly return the payment to Respondent Derrick E. Mc Gavic.

16.

Upon court approval of this AVC, Respondent Derrick E. Mc Gavic agrees to adhere to each of the following requirements:

A. He shall immediately cease the practice of law and be permanently restrained from acting as a Debt Collector or owning or operating a law firm, a collection agency or any other debt collection business in the State of Oregon. In addition, on or before March 16, 2011, he shall tender his Form B Resignation to the Oregon State Bar, and upon acceptance by the Oregon Supreme Court will thereby irrevocably resign from the practice of law in the State of Oregon.

B. The Law Firm of MCGAVIC & FINNEY, P.C., formerly DERRICK E. MC GAVIC, P.C., shall cease all debt collection activities and shall be dissolved in accordance with ORS 60.621 *et seq.* in such a manner to allow for an orderly transition of client files to a new attorney or law firm or as otherwise may be directed by respondents' clients, and the winding up of the affairs of the corporation.

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1 17.

2 The obligations of the individual respondents to this AVC (Mc Gavic and Finney,
3 respectively) shall be several and not joint; with each respondent being solely responsible for
4 his/her violation, if any.

5 18.

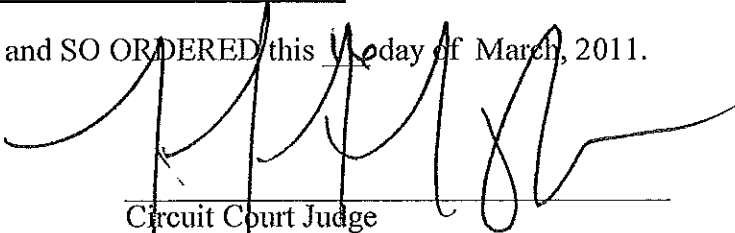
6 Effective immediately upon court approval of this AVC, Respondent Finney agrees to
7 adhere to each of the following requirements:

- 8 A. Respondent shall list the name of the Original Creditor with the last four digits of
9 the Creditor's Account Number in their validation notices and/or demand letters as
10 required in 15 U.S.C. § 1692g.
- 11 B. Respondent shall list the actual amount of defaulted debt in their validation notices
12 and/or demand letters as required in 15 U.S.C § 1692g – identifying additional costs
13 and or fees that have been added after charge-off specifically and separately.
- 14 C. Upon timely request for verification pursuant to 15 U.S.C § 1692g(b), respondent
15 shall seek verification from the creditor (directly or through her client), or a copy of
16 the judgment, and obtain and present a copy of proof of such verification or
17 judgment to the debtor prior to continuing any collection efforts.
- 18 D. For every default judgment sought, respondents shall attach as an exhibit evidence
19 of the debtor's relationship with the creditor and/or the respondent's client's
20 relationship or privity with the original creditor and the correct amount of defaulted
21 debt – identifying additional costs and or fees specifically and separately.
- 22 E. In requesting attorneys' fees from the court, respondent shall:
- 23 a. Present an accurate accounting of time actually spent for each "real" itemized
24 service listed.
- 25 b. Not use multipliers based on the debt amount or venue.

- 1 F. Respondent shall conduct a reasonable skip trace before requesting alternate service
2 of process.
- 3 G. Service of process of any summons or writ shall be accomplished by an
4 independent contractor whose office is physically located outside the premises of
5 respondents' firm and must not be accomplished by an employee or agent of the
6 firm. The foregoing does not apply when service is accomplished by mail service
7 pursuant to ORCP 7D(2)(d).
- 8 H. Respondent shall make reasonable efforts not to make phone calls using autodialers
9 to contact debtors' cell phones. To insure such phone calls will not be made,
10 respondents shall:
- 11 a. Amend all forms requesting debtor telephone contact information to include
12 identification of debtor cell phone numbers;
- 13 b. Make reasonable efforts to ensure that autodialers do not call such cell
14 phones numbers.
- 15 I. Respondent shall cease calling debtors who request in writing not to be called.
- 16 J. No part of respondents' judgment debtor interrogatories shall require debtors to
17 waive any statutory right he or she may possess other than answering proper
18 questions as per interrogatory.
- 19 K. Nothing in this AVC shall prohibit the respondent from petitioning the court to
20 modify one or more provisions, should the law materially change after the date of
21 the AVC.

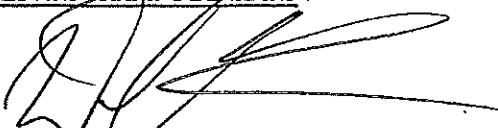
22 **APPROVAL BY COURT**

23 APPROVED FOR FILING and SO ORDERED this 14 day of March, 2011.

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Circuit Court Judge

1 REVIEW BY RESPONDENTS' ATTORNEYS

2 Approved as to form.

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4 David Jacobs
Attorney for Derrick E. Mc Gavic

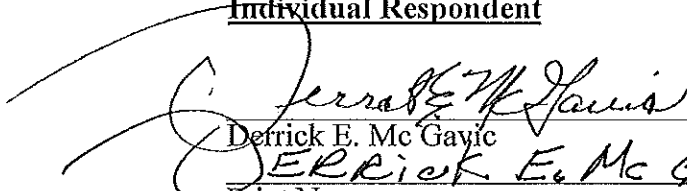
5 
6 Jet Harris
Attorney for Kristan Finney

7 RESPONDENTS' SIGNATURES AND ACKNOWLEDGMENTS

8 Respondents have read and understand this agreement and each of its terms.

9 Respondents agree to each and every term.

10 Individual Respondent

11 
12 Derrick E. Mc Gavic

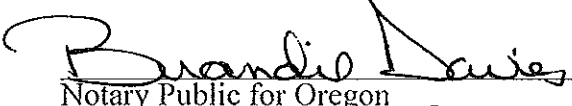
13 DERRICK E. Mc GAVIC
Print Name

14 Address 590 Watson Drive

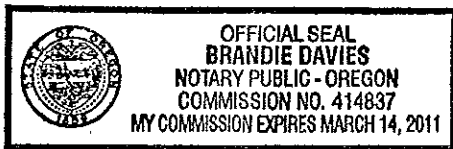
15 Eugene, OR 97404-1346

16 STATE OF OREGON; County of Lane; ss:

17 This instrument was acknowledged before me on March 10, 2011 by Derrick E.
18 Mc Gavic.

19 
Notary Public for Oregon

My Commission Expires: 3-14-11



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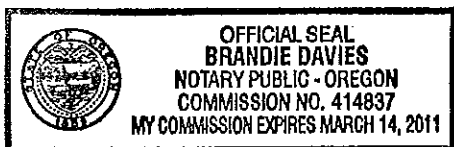
Corporate Respondent

Derrick E. Mc Gavic, in my representative capacity, acknowledge that I am the President of McGavic & Finney P.C., formerly Derrick E. Mc Gavic, P.C., and I am fully authorized and empowered to sign this Assurance of Voluntary Compliance on behalf of McGavic & Finney, P.C. and bind the same to the terms hereof.

Derrick E. Mc Gavic
Derrick E. Mc Gavic
DERRICK E. MCGAVIC
Print Name
DERRICK E. MCGAVIC
Title: President
Address 1666 W. 12th Avenue
P.O. Box 10163
Eugene, OR 97440

STATE OF OREGON; County of Lane; ss:

Personally appeared before me Derrick E. Mc Gavic, who acknowledged that he is the President of McGavic & Finney, P.C., and that said instrument was signed on behalf of McGavic & Finney, P.C., by authority of the Board of Directors, and acknowledged the foregoing instrument to be its voluntary act and deed. DATED this 10th day of March, 2011.



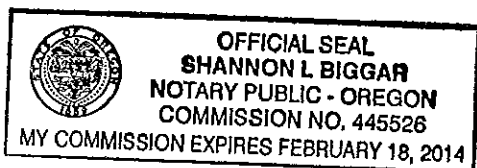
Brandie Davies
Notary Public of Oregon
My Commission Expires: 3-14-11

Individual Respondent

Kristan K. Finney
Kristan Finney
KRISTAN K. FINNEY
Print Name
Address PO Box 10163
Eugene OR 97440

STATE OF OREGON; County of Lane; ss:

This instrument was acknowledged before me on March 10, 2011 by Kristan Finney.

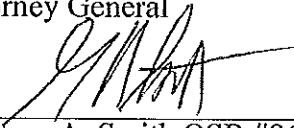


Shannon L. Biggar
Notary Public for Oregon
My Commission Expires: Feb 18, 2014

1 ACCEPTANCE OF DOJ

2 Accepted this 15 day of March, 2011.

3 JOHN R. KROGER
4 Attorney General



5 _____
6 Gregory A. Smith OSB #862913
7 Assistant Attorney General
8 Department of Justice
9 Of Attorneys for Plaintiff
10 Financial Fraud/Consumer Protection Section
11 1162 Court Street NE
12 Salem, OR 97301-4096
13 Phone: (503) 934-4400
14 Fax: (503) 378-5017
15 Email: Gregory.A.Smith@doj.state.or.us
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