

99-027

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KS. DISTRICT COURT
300 JUDICIAL DISTRICT

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TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, *ex rel.*
CARLA J. STOVALL, Attorney General)

Plaintiff,)

vs.)

OMAHA'S BEST MEATS,)

Defendant.)

Case No. 99C446

Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 24th day of March, 1999, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Omaha's Best Meats appears by and through David A. Hanson of Glenn, Cornish, Hanson and Karns, Chartered.

Whereupon, the parties advise the Court that for the purposes of this proceeding, they have stipulated and, agree to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*

3. Defendant Omaha's Best Meats is a foreign limited liability company organized under the laws of the state of Nebraska.

4. Defendant is a supplier within the definition of K.S.A. §50-624(i) and a seller within the definition of K.S.A. §50-901(g), and has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h). Specifically, Defendant, through an independent contractor sales representative, sold Defendant's meat products to at least one consumer in the State of Kansas.

5. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

6. Defendant stipulates and waives any objection to venue in Shawnee County.

7. Defendant is a distributorship which offers for sale and sells meat, poultry, and seafood.

8. The Attorney General alleges (though Defendant does not admit) Defendant by and through its independent contractor sales representative engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendant provided a Kansas consumer with a brochure which listed meat, chicken, and seafood products available, but did not include prices-per-pound of such products being sold in quantities larger than one pound. A true and correct copy of Defendant's brochure is attached hereto and marked as Exhibit A. Defendant offered a consumer a "6-pack-case special" for prices differing from those listed in Defendant's brochure; however, Defendant failed to disclose the resulting price-per-pound for these differing prices. This is in violation of K.S.A. §50-903(b)(4), in that Defendant represented to a consumer prices of products to be offered for sale in units larger than one pound in terms other than price per single pound.

- b. Defendant's solicitation and sale to a Kansas consumer of meat products by the box, by the case, or by serving, without disclosing to such consumer the price per pound of such meat products, is in violation of K.S.A. §50-902, in that such representations are misleading and deceiving in respect to price-per-pound.
 - c. Defendant failed to furnish a Kansas consumer with a fully completed receipt which contained in immediate proximity to the space reserved for the consumer's signature a notice of consumer's rights to cancel, in violation of K.S.A. §50-640(b)(1).
 - d. Defendant failed to furnish a Kansas consumer with a completed "Notice of Cancellation" form in duplicate, attached to consumers' receipts which was easily detachable and which contained the consumer's right to cancellation form in 10-point boldface type, in violation of K.S.A. §50-640(b)(2).
 - e. Defendant failed to inform a Kansas consumer orally of such consumer's rights to cancel, at the time such consumer purchased meat from Defendant, in violation of K.S.A. §50-640(b)(5).
 - f. Defendant willfully sold to a Kansas consumer a case of meat product which Defendant represented to be fifty (50) pounds; however, Defendant's product actually consisted of boxes totaling twenty-three (23) pounds of meat. This is in violation of K.S.A. §50-626(b)(2), in that it is the willful use in oral and written representation of exaggeration and falsehood as to a material fact. This is also in violation of K.S.A. §50-902, in that it is the advertising, solicitation, offer and sale of meat product which is misleading and deceiving in respect to quantity.
9. Defendant, by entering into this Consent Judgment, shall not be deemed to admit the violations of the Kansas Consumer Protection Act alleged herein.
10. Defendant agrees to refrain from and to be enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eight (8) of this Consent

Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

11. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or other representative of Defendant.

12. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

13. Defendant agrees to promptly respond to any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment and to attempt in good faith to resolve any such complaint to the reasonable satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

14. Defendant agrees that in the event of its entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, Defendant and Defendant's successors and assigns shall also be bound by the terms of this Consent Judgment.

15. Defendant agrees to pay \$1,250 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$1,250 in civil penalties to the "State of Kansas". Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment.

16. Defendant agrees to maintain all business records pertaining to any consumer sale or transaction within the state of Kansas for a period of five years and to allow the Attorney General to inspect all of Defendant's business records pertaining to any consumer sale or transaction within the state of Kansas in the future.

17. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the enforcement of compliance herewith, and for the punishment of violations thereof.

18. 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, portions or parts.

19. Except as otherwise provided herein, compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by any other applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under her jurisdiction.

20. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the 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. Further, the parties agree that this Consent Judgment resolves all issues known to parties under the Kansas Consumer Protection Act relating to the acts and practices alleged to be deceptive or unconscionable in paragraph eight (8), including sub-paragraphs, of this Consent Judgment up through the date of the execution of this Consent Judgment. Pursuant to the terms of this Consent Judgment, the Kansas Attorney General agrees that she and her office will not pursue any claims, demands or causes of action under the Kansas Consumer Protection Act against Defendant for the acts and practices alleged to be deceptive and/or unconscionable in paragraph eight (8) of this Consent Judgment up through the date of the

execution of this Consent Judgment, excepting only any action which may be required to enforce the provisions of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

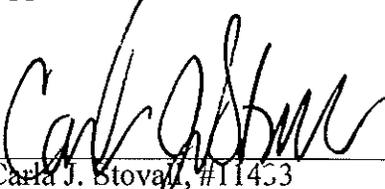
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered, in accordance with paragraph fifteen (15) above, against Defendant in favor Plaintiff in the amount of \$2,500.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

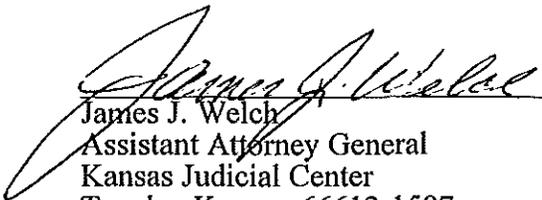
IT IS SO ORDERED.

(S/Hon. MARCIA J. LOCKERT
DISTRICT COURT JUDGE
4/1/99

Approved by:



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