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IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
Division 17

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

Plaintiff,

v.

RHEUBEN CLIFFORD JOHNSON III,
d/b/a Killcreek Farm & Landscape Supply,
d/b/a A-bees Beekeepers Honeybee Removal &
Animal Specialists, d/b/a Apex Lawn & Landscape,
d/b/a Budget Bee Wildlife Management,
d/b/a Econolawn, and
d/b/a Aquatic Gardens

Defendants.

02 CV 08017

Case No. _____

(Pursuant to K.S.A. Chapter 60)

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 2nd day of December, 2002, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through Stacy A. Jeffress, Assistant Attorney General. Defendant Rheuben Clifford Johnson III, d/b/a Killcreek Farm & Landscape Supply, d/b/a A-bees Beekeepers Honeybee Removal & Animal Specialists, d/b/a Apex

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS.

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Lawn & Landscape, d/b/a Budget Bee Wildlife Management, d/b/a Econolawn, and d/b/a Aquatic Gardens appears by and through counsel, Keith Martin. There are no other appearances.

WHEREUPON, the parties appearing before the Court advise that they have stipulated and agree to the following matters:

THE PARTIES

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 statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Defendant Rheuben Clifford Johnson III (hereinafter "Defendant Johnson") is a sole proprietor d/b/a Killcreek Farm & Landscape Supply, d/b/a A-bees Beekeepers Honeybee Removal & Animal Specialists, d/b/a Apex Lawn & Landscape, d/b/a Budget Bee Wildlife Management, d/b/a Econolawn, and d/b/a Aquatic Gardens. At all times relevant hereto, Defendant Johnson resided at and operated his businesses out of 32750 West 143rd Street, Gardner, Kansas 66030.
4. Defendant Johnson is a supplier as defined by K.S.A. 50-624(j) (2001 Supplement).
5. At all times relevant hereto, and in the ordinary course of business, Defendant Johnson engaged in consumer transactions as defined by K.S.A. 50-624(c).
6. At all relevant times hereto, Defendant Johnson was responsible for the acts of his employees, agents and representatives under the doctrine of *respondeat superior*.

JURISDICTION AND VENUE

7. Defendant Johnson admits the Court has personal and subject matter jurisdiction.
8. Defendant Johnson admits venue is proper in the Tenth Judicial District of Kansas (Johnson County).

ALLEGATIONS

9. The Attorney General alleges that Defendant Johnson engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act; Rheuben Johnson denies the allegations of paragraph 9: ^{SAS}

- A. Defendant Johnson willfully failed to state, concealed, suppressed, or omitted material facts when he entered into a consumer transaction with Katherine Townsend on or about August 13, 2001, failed to disclose the prices he would charge for his services, had the consumer sign a blank "Purchase Agreement" form with no prices filled in, and at no time informed the consumer that the final cost would be substantially greater than the amount he stated to her during the phone conversation which precipitated his call to the consumer's house, and said acts constitute deceptive acts or practices in violation of K.S.A. 50-626(b)(3).
- B. Defendant Johnson willfully failed to state, concealed, suppressed, or omitted a material fact when he charged Kansas sales tax to Katherine Townsend on or about August 13, 2001, and failed to disclose that he had never paid Kansas sales tax he collected from Kansas consumers to the Kansas Department of Revenue, and said acts constitute deceptive acts or practices in violation of K.S.A. 50-626(b)(3).
- C. Defendant Johnson willfully failed to state, concealed, suppressed, or omitted a material fact when he charged Kansas sales tax to Fred and Carla Timberlake on or about October 2, 2001, and failed to disclose that he had never paid Kansas sales tax he collected from Kansas consumers to the Kansas Department of Revenue, and said acts constitute deceptive acts or practices in violation of K.S.A. 50-626(b)(3).
- D. Defendant Johnson willfully failed to state, concealed, suppressed, or omitted a material fact when he failed to disclose to Fred and Carla Timberlake on or about October 2, 2001, that the unnamed companion Defendant Johnson had apply the pesticides to the structure of the consumers' residence was not licensed by the Kansas Department of Agriculture to apply such pesticides, and said acts constitute deceptive acts or practices in violation of K.S.A. 50-626(b)(3).
- E. Defendant Johnson willfully failed to state, concealed, suppressed, or omitted a material fact when he failed to disclose to Fred and Carla Timberlake on or about October 2, 2001, that neither he nor his businesses were licensed by the

Kansas Department of Agriculture to conduct structural pest control, and said acts constitute deceptive acts or practices in violation of K.S.A. 50-626(b)(3).

- F. Defendant Johnson failed on or about August 13, 2001, to furnish Katherine Townsend with a fully completed receipt or copy of the "Purchase Agreement" at the time of the consumer transaction which showed the date of transaction and which contained in immediate proximity to the space reserved for the consumer's signature a statement in boldface type of a minimum size of 10 points in substantially the following form, "YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT," and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 60-640(b)(1).
- G. Defendant Johnson failed on or about October 2, 2001, to furnish Fred and Carla Timberlake with a fully completed receipt or copy of the "Purchase Agreement" at the time of the consumer transaction which showed the date of transaction and which contained in immediate proximity to the space reserved for the consumer's signature a statement in boldface type of a minimum size of 10 points in substantially the following form, "YOU THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT," and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 60-640(b)(1).
- H. Defendant Johnson failed on or about August 13, 2001, to furnish Katherine Townsend with a complete form in duplicate captioned "NOTICE OF CANCELLATION" which is attached to the contract or receipt and is easily detachable, and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(2).
- I. Defendant Johnson failed on or about October 2, 2001, to furnish Fred and Carla Timberlake with a complete form in duplicate captioned "NOTICE OF CANCELLATION" which is attached to the contract or receipt and is easily detachable, and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(2).
- J. Defendant Johnson failed to notify Katherine Townsend on or about August 13, 2001, of the date by which she could give notice of cancellation of the

transaction, and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(3).

- K. Defendant Johnson failed to notify Fred and Carla Timberlake on or about October 2, 2001, of the date by which they could give notice of cancellation of the transaction, and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(3).
- L. Defendant Johnson failed on or about August 13, 2001, to inform Katherine Townsend orally at the time she signed a contract or purchased property or services of said consumer's right to cancel, and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(5).
- M. Defendant Johnson failed on or about October 2, 2001, to inform Fred and Carla Timberlake orally at the time he signed a contract or purchased property or services of said consumers' right to cancel, and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(5).
- N. Defendant Johnson negotiated the check given to him by Katherine Townsend in payment for services before midnight of the fifth business day following the day the services were purchased and said acts constitute an unfair and deceptive act or practice in violation of K.S.A. 50-640(b)(8).
- O. Defendant Johnson represented, knowingly or with reason to know, that his property or services had sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they did not have, to-wit: the Purchase Agreement Defendant Johnson presented to Katherine Townsend stated that he had provided a "detachable '3 day cancellation notice'" to the consumer when in truth and in fact he had not provided such notice, and said acts constitute an unfair deceptive act or practice in violation of K.S.A. 50-626(b)(1)(A).
- P. Defendant Johnson represented, knowingly or with reason to know, that his property or services had sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they did not have, to-wit: the Purchase Agreement Defendant Johnson presented to Fred and Carla Timberlake stated that he had provided a "detachable '3 day cancellation notice'" to the consumers when in truth and in fact he had not provided such notice, and said acts constitute an unfair deceptive act or practice in violation of K.S.A. 50-626(b)(1)(A).
- Q. The amount of \$672.50, plus tax, which Defendant Johnson charged Katherine Townsend on or about August 13, 2001, for pest control services

grossly exceeded the price at which similar pest control services were readily obtainable in similar transactions by similar consumers, and said acts constitute unconscionable acts or practices in violation of K.S.A. 50-627(a) and 50-627(b)(2).

- R. The amount of \$454.00, plus tax, which Defendant Johnson charged Fred and Carla Timberlake on or about October 2, 2001, for pest control services grossly exceeded the price at which similar pest control services were readily obtainable in similar transactions by similar consumers, and said acts constitute unconscionable acts or practices in violation of K.S.A. 50-627(a) and 50-627(b)(2).

INJUNCTIVE RELIEF

10. Defendant Johnson agrees to refrain from and to be permanently enjoined from engaging in violations of the Kansas Consumer Protection Act described in paragraph nine (9) above. Defendant Johnson agrees that engaging in such acts after the date of this Consent Judgment shall constitute a violation of this Order.

11. Defendant Johnson, individually, and d/b/a Killcreek Farm & Landscape Supply, d/b/a A-bees Beekeepers Honeybee Removal & Animal Specialists, d/b/a Apex Lawn & Landscape, d/b/a Budget Bee Wildlife Management, d/b/a Econolawn, and d/b/a Aquatic Gardens, is permanently enjoined from performing any inspection of the property of another to identify termites or other pests, from performing any treatment of the property of another for the prevention or eradication of termites or other pests, and from performing any type or manner of pesticide services unless and until Defendant Johnson and his businesses are properly certified and licensed by the Kansas Department of Agriculture.

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

13. Defendant Johnson agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Consent Judgment.

CONSUMER RESTITUTION

14. Defendant Johnson agrees at the time of signing this Consent Judgment to pay the sum of \$719.58 as restitution to Katherine Townsend pursuant to K.S.A. 50-632(a)(3). Said payment shall be a judgment for Plaintiff against Defendant Johnson.

15. Defendant Johnson agrees to forever release any and all claims for payment he may now have, whether known or unknown, which have accrued or have yet to accrue against Fred and Carla Timberlake, and Defendant Johnson agrees not to assert any claim or cause of action against said consumers.

INVESTIGATIVE FEES AND CIVIL PENALTIES

16. Defendant Johnson agrees to pay \$250.00 in investigative fees and civil penalties by cashier's check to the "Office of Attorney General", pursuant to K.S.A. 50-632 and K.S.A. 50-636, at the time of signing this Consent Judgment. Said payment shall be a judgment for Plaintiff against Defendant Johnson.

GENERAL PROVISIONS

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 modification of any of the provisions hereof, 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. Compliance with this Consent Judgment does not relieve Defendant Johnson of any obligation imposed by 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 this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant Johnson nor shall Defendant Johnson 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.

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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant Johnson and in favor of Plaintiff State of Kansas in the total amount of \$719.58 in consumer restitution.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant Johnson and in favor of Plaintiff State of Kansas in the total amount of \$250.00 in civil penalties and investigative fees.

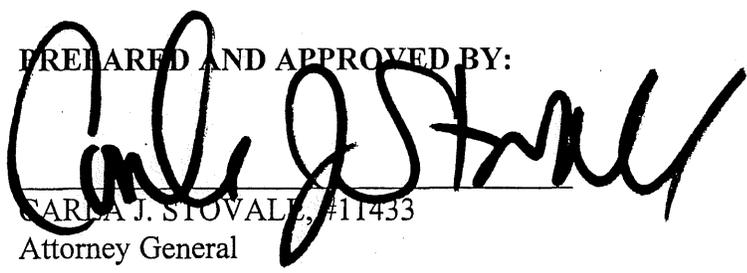
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

WILLIAM O ISENHOUR JR

The Honorable _____
Judge of the District Court

PREPARED AND APPROVED BY:



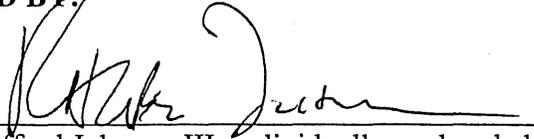
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APPROVED BY



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d/b/a A-bees Beekeepers Honeybee Removal & Animal Specialists,
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d Econolawn, and Aquatic Gardens