

FILED

IN THE DISTRICT COURT OF RENO COUNTY, KANSAS

Division \_\_\_\_\_

2011 MAR 28 PM 1:26

CLERK OF DISTRICT COURT  
RENO COUNTY, KANSAS

BY \_\_\_\_\_

STATE OF KANSAS, *ex rel.* )  
DEREK SCHMIDT, Attorney General, )  
 )  
Plaintiff, )

v. )

BRADLEY OWENS )  
d/b/a )  
PIER 5 BOATS )  
d/b/a )  
P5 MARINE )  
 )  
Defendants. )

2011 CV 154  
Case No. \_\_\_\_\_

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 28 day of March, 2011, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Benjamin Miller-Coleman, Assistant Attorney General.

WHEREUPON the parties advise the Court that they have stipulated and agreed to the following:

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

1. Derek Schmidt is the duly appointed, qualified, and acting Attorney General for 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 ("KCPA"), K.S.A. 50-623, *et seq.*

3. Defendant Bradley Owens is a sole proprietor doing business as Pier 5 Boat & RV and P5 Marine in the State of Kansas.

4. Defendant Bradley Owens has a principal place of business at 500 S. Main St., South Hutchinson, Kansas 67505.

5. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

6. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, pursuant to K.S.A. 50-623 *et seq.*

7. Defendant stipulates and admits that venue is proper in this Court.

8. Defendant is a supplier within the definition of K.S.A. 50-624(j).

9. Defendant is engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

10. "Defendant" shall mean Bradley Owens d/b/a Pier 5 Boat & RV and d/b/a P5 Marine; his employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with him.

11. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "represent."

12. Defendant engages in the selling of boats, personal watercraft and recreational vehicles to Kansas consumers.

13. Defendant engaged in consumer transactions in Kansas and while doing so committed deceptive and unconscionable acts in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626 and K.S.A. 50-627. The Plaintiff alleges the following:

- a. Defendant engaged in a deceptive act in connection with a consumer transaction, in violation of K.S.A 50-626(a);
- b. Defendant made misrepresentations, knowingly or with reason to know, regarding the sponsorship, approval, accessories, characteristics, uses, benefits or quantities of his products, in violation of K.S.A. 50-616(b)(1)(A);
- c. Defendant made misrepresentations regarding the standard, quality, grade, style or model, of certain product, in violation of K.S.A. 50-626(b)(1)(D);
- d. Defendant willfully used, in oral or written representations, exaggeration, falsehood, innuendo or ambiguity as to material facts, in violation of K.S.A. 50-626(b)(1)(G)(2);
- e. Defendant willfully failed to state a material fact or willfully concealed, suppressed or omitted a material fact, in violation of K.S.A. 50-626(b)(1)(G)(3);
- f. Defendant engaged in unconscionable acts or practices in connection with consumer transactions, in violation of K.S.A. 50-627(a); one such transaction resulted in multiple felony convictions in Reno County District Court Case No. 2010-CR-001051 on 1/31/2011 and is to be sentenced on 3/11/2011 at 3:00 p.m.
- g. Defendant failed to provide a consumer with a material benefit from the subject of the transaction, in violation of K.S.A 50-627(b)(3);
- h. Defendant made a misleading statement of opinion on which a consumer relied to the consumer's detriment, in violation of K.S.A. 50-627(b)(6);
- i. Defendant sold merchandise "as is" which limited the implied warranty of merchantability, in violation of K.S.A. 50-627(b)(7) and K.S.A. 50-639(a)(1).

14. Defendant specifically admitted the allegations contained in paragraph thirteen (13) during a statement taken at the Attorney General's Office on February 17, 2011.

15. Defendant agrees to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph thirteen (13) herein, and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

16. Defendant 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.

17. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division against the Defendant.

18. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to all of Defendant's employees, agents, prospective customers and representatives within five days of signing the Consent Judgment.

19. Defendant shall provide a refund to the following consumers, in the amounts set forth below:

- a. Ivan Sellers - \$8,200.00
- b. Thomas Pollard - \$1,913.00
- c. Travis Van Voorst - \$3,000.00
- d. Tim Murry and Alicia Staats-Murry - \$600.00
- e. Dick Scheibe - \$ 3,817.19

20. Restitution to the above-named consumers shall be delivered to the Office of the Kansas Attorney General within sixty (60) days of signing this Consent Judgment. Payment shall be made by certified checks payable directly to the named consumers which shall be delivered to the Plaintiff within sixty (60) days of signing this Consent Judgment.

21. Defendant shall pay, via certified check, \$3,715.00 to the Office of the Kansas Attorney General for investigative fees, expenses, and costs, pursuant to K.S.A. §50-632. The

funds shall be delivered to the Plaintiff within sixty (60) days of the entry of this Consent Judgment.

22. Defendant agrees that due to the nature of the conduct underlying this settlement, any unpaid restitution, penalties and/or fees shall not be dischargeable, pursuant to 11 U.S.C. §§523(a)(2)(A) and 523(a)(7), in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

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

24. 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.

25. 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.

26. Compliance with this Consent Judgment does not relieve Defendant 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 his jurisdiction.

27. 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 the 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.

28. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment for the defendant warrants that he or she is the duly authorized representative of the Defendant for whom the representative appears to be acting and has the authority to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

29. The restitution, which is to be paid to the consumers and the investigative fees, and expenses that are to be paid to the Attorney General are just, fair and reasonable.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered as follows:**

- A. The stipulation and agreement of the parties contained in paragraphs 1 through 29 above are adopted and approved as the findings of fact and conclusions of law of this Court.
- B. Judgment is entered against Defendant, and in total amount of favor of Plaintiff in the amount, of \$21,245.19 for consumer restitution and investigation fees, expenses and costs.
- C. Defendant is enjoined from, engaging in those acts and practices set forth in paragraph thirteen (13) herein, and that should defendant engage in such acts or similar acts the same shall constitute a violation of this Consent Judgment.

D. 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.

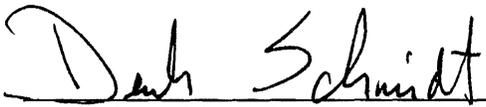
**IT IS SO ORDERED.**



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DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

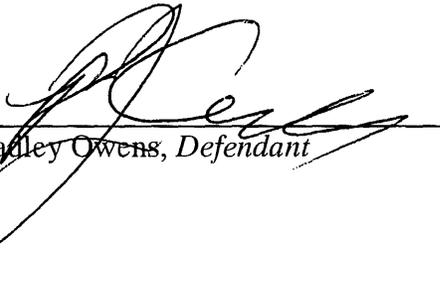


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DEFENDANT:



Bradley Owens, Defendant