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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2016 FEB -9 A 9 05

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
JUDSON ENTERPRISES, INC.)
"A MONTANA CORPORATION")
D/B/A)
K-DESIGNERS)
)
Defendant.)

Case No. 2014-CV-001009

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 8th day of February, 2016, the parties' 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 Meghan E. Stoppel, Assistant Attorney General. Defendant appears by and through counsel, Gary L. Ayers of Foulston Siefkin LLP.

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

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, 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, K.S.A. 50-623, *et seq.*

3. Defendant Judson Enterprises, Inc. "A Montana Corporation" d/b/a K-Designers ("Defendant") is a Montana corporation with a principal place of business at 2440 Gold River Road, Suite 100, Gold River, California 95670.

4. Defendant has been registered with the Kansas Secretary of State as a foreign corporation since 1993.

5. All references to Defendant herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, members, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates, and successors.

6. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

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

PLAINTIFF'S ALLEGATIONS

8. Defendant is a "supplier" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-624(l).

9. Defendant is engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-624(c).

10. At all times relevant to Plaintiff's Petition, Defendant acted as a "telephone solicitor" in Kansas, as that term was defined by K.S.A. 2002 Supp. 50-670(a)(3) and is currently defined by K.S.A. 2014 Supp. 50-670(a)(4).

11. At all times relevant to Plaintiff's Petition, Defendant engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 2014 Supp. 50-670(a)(1).

12. At all times relevant to Plaintiff's Petition, Defendant contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant's residential home improvement products and services.

13. At all times relevant to Plaintiff's Petition, and while soliciting Kansas consumers, Defendant engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 2014 Supp. 50-623 *et seq.* and the Kansas No Call Act, K.S.A. 2014 Supp. 50-670 *et seq.*, which acts and practices include, but are not limited to:

- a. making, or causing to be made, unsolicited consumer telephone calls to Kansas consumers whose telephone numbers are listed on the National Do Not Call Registry, in violation of K.S.A. 2002 Supp. 50-670a(e) and K.S.A. 2014 Supp. 50-670a(c);
- b. failing to consult the National Do Not Call Registry prior to making unsolicited consumer telephone calls in Kansas, in violation of K.S.A. 2002 Supp. 50-670a(b) and K.S.A. 2014 Supp. 50-670a(a);
- c. failing to promptly discontinue unsolicited consumer telephone calls to Kansas consumers after the consumer gave Defendant a "negative response," in violation of K.S.A. 2014 Supp. 50-670(b)(4);
- d. failing to deliver written prize notifications to Kansas consumers, as required by K.S.A. 2014 Supp. 50-692(b);
- e. making false or deceptive statements to Kansas consumers regarding Defendant's sales and discounts, in violation of K.S.A. 2014 Supp. 50-626.

DEFENDANT'S DENIALS

14. Defendant states that calls made to consumers on the Do Not Call Registry were made as a commercial co-venture with a charity registered in Kansas, which Defendant believed at the time was not a violation of Kansas law. Defendant believed it was making calls to set appointments while representing a Kansas registered charity. With regard to discounted prices, Defendant contends those were attached to specific sales, and that customers were given documentation outlining the sale offer, and, at the time of purchase, Defendant confirmed the customer's understanding of the sales offer.

15. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendant of a violation of the KCPA, the Kansas No Call Act or any other applicable law or regulation as alleged by Plaintiff. Notwithstanding, Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purpose of settlement.

INJUNCTIVE RELIEF

16. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph thirteen (13), 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.

17. Defendant agrees to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* and the Kansas No-Call Act, K.S.A. 50-670, *et seq.*

18. Defendant agrees to comply with the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §

6101 *et seq.*, and all federal regulations promulgated thereby, including the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*

19. Defendant agrees, within thirty (30) days after entry of this Consent Judgment, to adopt comprehensive policies and procedures that will, at a minimum, comply with the requirements of K.S.A. 50-670a(e). Defendant further agrees that such policies and procedures shall be reviewed at least annually to ensure compliance with applicable state and federal telemarketing laws, including but not limited to the Kansas No Call Act. At the conclusion of each review, all policies and procedures shall be updated to reflect the date of the last review.

20. Defendant agrees to train all employees, agents, representatives, affiliates, assignees and successors on the policies and procedures required under this Consent Judgment, and to provide its independent contractors with those same policies and procedures.

21. For a period of five (5) years after entry of this Consent Judgment, Defendant must submit annual compliance reports, sworn under penalty of perjury, describing in detail whether and how Defendant is in compliance with this Judgment. Defendant further agrees to create and maintain, for a period of ten (10) years after entry of this Consent Judgment, all records necessary to demonstrate full compliance with this Judgment, including all written consumer complaints concerning the acts and practices alleged by Plaintiff herein and the compliance reports submitted by Defendant to Plaintiff.

22. Within fourteen (14) days of receipt of a written request from Plaintiff, Defendant agrees to submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce documents for inspection by Plaintiff, provided such documents are related to the subject matter of this Consent Judgment.

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

24. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment or within fifteen (15) days after any person assumes such position or responsibilities.

25. Defendant shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendant is prohibited by this Consent Judgment.

26. Defendant shall require its independent contractors comply with the terms set forth in this Consent Judgment.

27. Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

28. Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

INVESTIGATIVE FEES AND CIVIL PENALTIES

29. Defendant agrees to pay to the Office of the Kansas Attorney General:

- a. eighty thousand dollars (\$80,000.00) in civil penalties for violations of the Kansas No Call Act, pursuant to K.S.A. 2014 Supp. 50-670a(i);

- b. fifteen thousand, five hundred (\$15,500.00) in civil penalties for violations of the KCPA, pursuant to K.S.A. 2014 Supp. 50-636; and
 - c. fourteen thousand, five hundred dollars (\$14,500.00) in investigative fees, pursuant to K.S.A. 2014 Supp. 50-632(c)(7).
30. Defendant agrees to pay the aforementioned fees and penalties to the Office of the Kansas Attorney General in seventeen (17) installments as follows:
- a. \$7,000 within ten (10) days of filing this Consent Judgment;
 - b. The remaining \$103,000 shall be paid in sixteen (16) equal installments of \$6,437.50 every month thereafter for sixteen (16) months, payable on the thirty-day anniversary of the first payment, until the total amount of \$110,000 is paid in full.
31. Upon receipt of the payments required under paragraph thirty (30), Plaintiff agrees to release and discharge Defendant from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under the KCPA, K.S.A. 50-623 *et seq.* or the Kansas No Call Act, K.S.A. 50-670 *et seq.* based on Defendant's conduct prior to the date of entry of this Consent Judgment.
32. Payment shall be made in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:
- Meghan E. Stoppel, Assistant Attorney General
Consumer Protection/Antitrust Division
Office of the Kansas Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612
33. Defendant agrees that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall

not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

OTHER PROVISIONS

34. The parties agree that any failure by Defendant to maintain records or submit the compliance reports required herein shall constitute a violation of this Consent Judgment.

35. For the purpose of monitoring compliance with this Consent Judgment, the Attorney General may use all lawful means, including but not limited to conducting undercover investigations, without prior notice to Defendant. Nothing in this Consent Judgment limits the Attorney General's lawful use of compulsory process, pursuant to K.S.A. 50-631.

36. Unless otherwise directed by Plaintiff in writing, all submissions to Plaintiff pursuant to this Consent Judgment must be emailed to cprotect@ag.ks.gov or sent by commercial courier to:

Meghan E. Stoppel, Assistant Attorney General
Consumer Protection/Antitrust Division
Office of the Kansas Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612

37. 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.

38. 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.

39. Compliance with this Consent Judgment does not relieve the 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.

40. 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 the 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.

41. This Consent Judgment represents the entire agreement between Plaintiff and Defendant, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

42. Nothing in this Consent Judgment shall be construed to create, waive or limit any private right of action.

43. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Each 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.

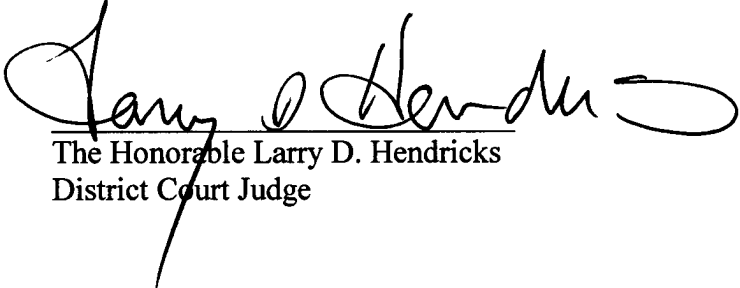
44. This Consent Judgment may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the order 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 against Defendants and in favor of Plaintiff in the amount of \$110,000.00.

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.

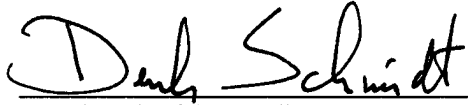
IT IS SO ORDERED.




The Honorable Larry D. Hendricks
District Court Judge

Prepared and approved by:

PLAINTIFF:



Derek Schmidt, KS #17781
Attorney General
Office of the Kansas Attorney General
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(785) 296-2215

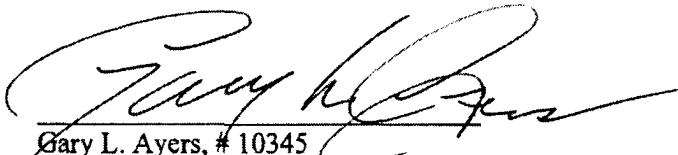


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