

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2018 OCT 16 P 3:07

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

Plaintiff,)

v.)

Case No. 2018-CV-167
Division No. 7

SALLY STEVENS, an individual)
and)
TANYA JOLLY, an individual)
and)
BEYOND BOUNTIFUL, INC.)
d/b/a BOUNTIFUL BASKETS FOOD CO-OP)

Defendants.)

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this date, 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 Sarah M. Dietz, Assistant Attorney General.

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, qualifying 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 Sally Stevens is an individual doing business as Bountiful Baskets with a residential address of 4218 E Buckboard Rd., Gilbert, Arizona 85297.

4. Defendant Tanya Jolly is an individual doing business as Bountiful Baskets with a residential address of 7103 E. Grandview St., Mesa, Arizona 85207.

5. Defendant Beyond Bountiful, Inc. is a dissolved Arizona Corporation formed in 2015 with a last known principal place of business at 8490 S Power Rd Ste 105- 127, Gilbert, Arizona 85297.

6. All references to the Defendants herein include acts performed individually, in concert, or by or through employees, directors, officers, owners, 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.

7. Jurisdiction and venue are appropriate in District Court of Shawnee County, Kansas, pursuant to K.S.A. § 50-638(a) and (b), respectively.

ALLEGATIONS

8. Plaintiff alleges that the Defendants have acted as “suppliers” in Kansas, as that term is defined by K.S.A. § 50-624(l). Defendants allege that they are not suppliers, but rather provide persons the opportunity to pool their funds with others in their area to benefit from volume discounts from suppliers.

9. Plaintiff alleges that the Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. § 50-624(c). Defendants dispute this allegation, but wish to enter into this Consent Judgment to resolve this lawsuit.

10. Plaintiff alleges that, were this matter to be litigated, the following could be proven:

From at least 2014 to May 31, 2018, Defendants operated an entity in Kansas using the word ‘co-op’ in their name. Defendants failed to comply with the Kansas

Cooperative Marketing Act, K.S.A. 17-1601 *et seq.* and, therefore, were not entitled to use 'co-op' in their name.

11. Plaintiff alleges that at all times relevant hereto, the Defendants engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*, which acts and practices include, but are not limited to, the Defendants represented Defendants as having sponsorship, approval, status, affiliation or connection that the Defendants did not have. Defendants dispute these allegations, but wish to enter into this Consent Judgment to resolve this lawsuit.

INJUNCTIVE RELIEF

12. The Defendants agree 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 Cooperative Marketing Act, K.S.A. 17-1601 *et seq.*

13. The Defendants shall not cause or encourage third parties, nor knowingly permit third parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

14. The Defendants 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.

15. The Defendants agree 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.

16. Defendants agrees to cooperate with the Office of the Kansas Attorney General in

investigating and remedying any complaints filed with the Consumer Protection Division against Defendants.

17. The parties voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise settlement of all issues raised herein.

MONETARY RELIEF

18. The Defendants agree to pay the Office of the Kansas Attorney General \$10,000.00 in investigative costs for alleged violations of the Kansas Consumer Protection Act pursuant to K.S.A. § 50-636 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:

Sarah M. Dietz, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

19. The Defendants agree to refund any consumers who have filed complaints with the Office of the Kansas Attorney General or directly with Defendants that the consumer suffered financial loss due to orders placed on or about April 23, 2018 for which delivery was canceled upon Defendants' receipt of the Temporary Restraining Order on April 25, 2018. The Office of the Kansas Attorney General has provided Defendants with the names of consumers who have filed complaints and will provide Defendants with the names of any such consumers who file complaints in the future, so that Defendants can cross-check the relevant payment and reimbursement records. Defendants agree to provide to the Office of the Kansas Attorney General timely proof of having paid such refunds including the names of the consumers and the amount refunded.

OTHER PROVISIONS

20. 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.

21. 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.

22. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Plaintiff from taking appropriate legal action to enforce any other statutes under his jurisdiction or from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

23. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the Defendants' business practices, nor shall the Defendants represent the Consent Judgment as such approval. The parties further understand and agree 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 this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendants, nor shall any inaction by the Attorney General be considered a waiver by the attorney general of any rights under this Consent Judgment or applicable law.

24. This Consent Judgment represents the entire agreement between Plaintiff and the

Defendants, 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.

25. Defendants hereby represent and warrant that Defendants have had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Defendants under this Consent Judgment and the consequences of breach hereunder. Defendants represent that Defendants have read the Consent Judgment and knows and understands the contents thereof. Defendants further represent and warrant that Defendants are signing this Consent Judgment as the result of their own free acts, and that Defendants have not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on their behalf, except for those contained in this Consent Judgment.

26. By signing this Consent Judgment, the representative of Defendants represents and warrants that such person is duly and legally authorized to execute this Consent Judgment on behalf of Defendants, thus binding the Defendants to 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 findings of fact and conclusions of law of the Court and any monies owed hereunder by the Defendants immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment for reimbursement of investigative costs is entered against the Defendants in favor of Plaintiff in the amount of \$10,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the

Kansas Consumer Protection Act, 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.

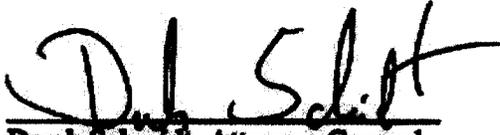
IT IS SO ORDERED.

10/16/2018
Date



Judge Franklin R. Theis

Prepared and respectfully submitted by:



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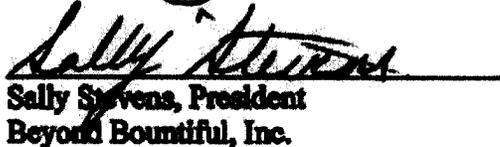
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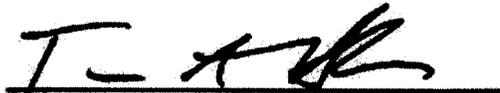
Sally Stevens, an individual



Tanya Jolly, an individual



Sally Stevens, President
Beyond Bountiful, Inc.



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