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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2018-CV-000184



Court: Shawnee County District Court
Case Number: 2018-CV-000184
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. JC Penney Corporation Inc
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", written in a cursive style.

/s/ Honorable Teresa L Watson, District Court Judge

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i>)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
J. C. PENNEY CORPORATION, INC.)
)
Defendant.)

(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 Lynette R. Bakker, Assistant Attorney General. Defendant appears by and through their counsel Cynthia Cordes of Husch Blackwell LLP.

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 J. C. Penney Corporation, Inc. is a for-profit corporation incorporated in Delaware in 1913 and headquartered at 6501 Legacy Dr. Plano, Texas 75024-3612. J. C. Penney

(alternately referred to throughout as Defendant) is one of the nation's largest apparel and home furnishing retailers, with store locations across the United States and Puerto Rico.

4. All references to Defendant 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.

5. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and in personam jurisdiction over the parties, under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

6. Defendant stipulates and admits that venue is proper in the 3rd Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).

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. At all times relevant hereto, and in the ordinary course of business, Defendant has acted as a "supplier" as defined by K.S.A. 50-624(l).

9. At all times relevant hereto, and in the ordinary course of business, Defendant has engaged in "consumer transactions" in Kansas, as defined by K.S.A. 50-624(c).

10. Defendant distributed free Instant Saving Coupons to its Kansas customers in November of 2016 as part of its Black Friday sales promotion. The Instant Saving Coupons were handed out only in stores, and indicated they could be used both in store and online.

11. Before distributing, but after the production and printing of the Black Friday Instant Savings Coupon and the promotional materials in support of those Coupons, Defendant suffered an online attack of another Instant Savings Coupon that was distributed as a part of another sales promotion prior to Black Friday. Defendant asserts this attack allowed the perpetrators to steal the value of the coupons prior to them being distributed in store and thereby rendered the coupons unusable by customers.

12. Defendant assert that in order to prevent a similar online attack on the Black Friday coupons, which would render the coupons valueless for customers, Defendant only honored the coupons in store or online with the assistance of an associate in store. Defendant posted signs at the registers throughout the stores notifying customers of this change.

13. Plaintiff disagrees and asserts Defendant could and should have taken further action to correct the misrepresentation regarding online redemption of the Instant Savings Coupon.

14. Defendant did not allow online redemption of the Instant Savings Coupons unless the redemption was done on behalf of a customer by an associate of the Defendant, despite the coupon's representation that it could be used in store and at Defendant's website.

15. Defendant does not admit liability for any of the acts or practices described or referred to herein, and rather contends that discontinuing online redemption of the Instant Savings Coupon was necessary to prevent additional theft of the value of the coupons from consumers.

16. Defendant does not agree or admit that the Kansas Consumer Protection Act creates or imposes any liability on Defendant relative to the acts or practices described or referred to herein.

17. Defendant likewise does not agree or admit that any other federal or state law, or the common law of any state, imposes any liability on Defendant relative to the acts or practices described or referred to herein.

RELIEF

18. 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.

19. 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.

20. Defendant agrees to pay to the Office of the Kansas Attorney General one hundred thousand dollars (\$100,000.00) for civil penalties, investigative costs, and/or investigative fees, pursuant to K.S.A. 50-632(a)(4) and K.S.A. 50-636. The Kansas Attorney General shall use these funds solely for enforcing and implementing the consumer protection laws of the State of Kansas that are within the jurisdiction of the Kansas Attorney General.

21. Payment shall be made at the time of the signing of this Consent Judgment in the form of a cashier's check, money order, or other certified funds payable to the Office of the Attorney General.

OTHER PROVISIONS

22. Defendant acknowledges that this Consent Judgment constitutes a stipulation to the allegations set forth herein, and that nothing about this Consent Judgment shall operate as a bar to any private action that any consumer may bring or has brought against the Defendant.

23. Defendant acknowledges that compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Attorney General from taking appropriate legal action to enforce any other statutes under this jurisdiction.

24. Defendant acknowledges that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of any representations, acts, or business practices of Defendant, and shall not represent the decree as such an approval. Defendant further understands 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.

25. Defendant acknowledges that the Attorney General may take appropriate legal action against Defendant for violation of this Consent Judgment and/or for future violations of the Kansas Consumer Protection Act, or any other law that the Attorney General is authorized to pursue and/or enforce.

26. Defendant hereby represents and warrants that it has 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 Defendant under this Consent Judgment, and the consequences of a breach of this Consent Judgment.

27. Defendant represents that it has read the foregoing Consent Judgment and knows and understands the contents thereof. Defendant further represents and warrants that it is signing this Consent Judgment as the result of its own free act, and that it has not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those

contained in this Consent Judgment. By executing this Consent Judgment, each of the undersigned covenants and represents that he or she has the power and authority to execute this Consent Judgment.

28. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

- A. The stipulations and agreements 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.
- B. Judgment is entered against Defendant and in favor of Plaintiff in the amount of one hundred thousand dollars (\$100,000.00).
- C. Defendant shall pay all costs associated with this action.
- 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.
- E. This Consent Judgment may be modified if the modification is agreed to by both parties and approved by the court.
- F. The Court retains continuing jurisdiction over this matter in that the injunctive terms of this Consent Judgment remain in effect.

IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF THE ELECTRONIC FILE STAMP.

Respectfully submitted,



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DEFENDANT



J.C. Penney Corporation, Inc.

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