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CLERK OF THE FRANKLIN COUNTY DISTRICT COURT  
CASE NUMBER: 2018-CV-000102



**Court:** Franklin County District Court

**Case Number:** 2018-CV-000102

**Case Title:** State of Kansas, ex rel., Derek Schmidt vs. Nick Ford, et al.

**Type:** Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "Eric Godderz".

/s/ Honorable Eric Godderz, District Court Judge

Melanie S. Jack, #13213  
Assistant Attorney General  
Office of the Attorney General  
Consumer Protection Division  
120 SW 10th Ave., 2nd Floor  
Topeka, Kansas 66612-1597  
Phone: (785) 296-3751  
Fax: (785) 291-3699  
[melanie.jack@ag.ks.gov](mailto:melanie.jack@ag.ks.gov)

**IN THE FOURTH JUDICIAL DISTRICT COURT OF  
FRANKLIN COUNTY, KANSAS**

<b>STATE OF KANSAS, <i>ex rel.</i></b>	)	
<b>DEREK SCHMIDT, Attorney General,</b>	)	
	)	
<b>Plaintiff,</b>	)	
v.	)	<b>Case No. 2018-CV-000102</b>
	)	
<b>NICHOLAS FORD, an individual;</b>	)	
<b>and</b>	)	
<b>CENTRAL RV, INC.,</b>	)	
<b>a Kansas Corporation;</b>	)	
<b>Defendants.</b>	)	
	)	

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

**CONSENT JUDGMENT**

**COMES NOW BEFORE THE COURT** a Consent Judgment pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Melanie Jack. Defendants appear by and through Derek MacKay and Trent Church, Knight Nicastro, LLC.

**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.*, ("KCPA").
3. Defendant Central RV, Inc., is a Kansas corporation.
4. Defendant Nicholas Ford is an individual and at all times relevant hereto is the owner and President of Defendant Central RV, Inc.
5. Defendant Nicholas Ford maintains a residential address in Gardner, Johnson County, KS 66030.
6. All references to Defendants herein include acts performed individually, in concert, or by or through directors, officers, owners, members, managers, agents, employees, representatives, affiliates, assignees and successors.
7. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.
8. Defendants stipulate and admit that venue is proper in this Court.

## **ALLEGATIONS**

9. Plaintiff alleges that, at all times relevant hereto, Defendant Nicholas Ford, as President of Defendant Central RV, Inc., managed and controlled the day to day operations of the business.
10. Plaintiff alleges that, at all times relevant hereto, Defendants have acted as a "supplier" in Kansas, as that term is defined by K.S.A. 50-624(l).

11. Plaintiff alleges that, at all times relevant hereto, Defendants have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

12. At all times relevant to Plaintiff’s Petition, the Defendants acted as a “vehicle dealer” in Kansas, as that term is defined by K.S.A. 8-2401(a).

13. At all times relevant to Plaintiff’s Petition, and while soliciting Kansas consumers, it is alleged the Defendants engaged in unconscionable and deceptive acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-626 and K.S.A. 50-627.

14. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

15. Plaintiff alleges that, at all times relevant hereto, Defendants, while conducting the aforementioned solicitations and sales in Kansas, engaged in unfair and deceptive acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

- a. exclude, modify or attempt to limit implied warranties of merchantability and fitness for a particular purpose by selling the travel trailer “WITH ALL FAULTS” and “NOT COVERED BY ANY DEALER WARRANTY” in violation of K.S.A. 50-639(a)(1);
- b. use of sales documents that create an ambiguity as to whether an implied warranty of merchantability exists in violation of K.S.A. 50-626(b)(2);
- c. made misrepresentations that sales of travel trailers were a particular standard, quality, grade, style or model knowing the sale involved a salvage travel trailer that differs materially from the representation in violation of K.S.A. 50-626(b)(1)(D);
- d. willful failure to state a material facts or willfully concealing, suppressing or omitting a material fact by failure to disclose prior salvage history in violation of K.S.A. 50-626(b)(3);
- e. willful concealment, suppression or omission of a material fact by soliciting for sale (or sale of) travel trailers and failing to disclose the reason the Defendants have no title to deliver a material fact, in violation of K.S.A. 50-626(b)(3);
- f. falsely stated, knowing or with reason to know, that a consumer transaction involves consumer rights, remedies or obligations by soliciting for sale (or sale of) travel trailers without delivery of a certificate of title to which a consumer is entitled, in violation of K.S.A. 50-626(b)(8);

16. Those acts set out in paragraph fifteen (15) are unfair and deceptive practices and constitute violations of the KCPA, pursuant to K.S.A. §50-623, *et seq.*

17. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise and settlement of all issues and allegations contained herein for the purpose of avoiding the time, expense, risk and uncertainty associated with litigation.

18. Pursuant to K.S.A. 50-632(b) Defendants are not deemed to admit the alleged violations set forth above. Defendants deny the allegations.

19. Upon execution and filing of this judgment, Plaintiff agrees to release and discharge Defendants from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under the KCPA arising out of the allegations recited herein in connection with conduct occurring prior to the execution of this judgment.

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

#### **INJUNCTIVE RELIEF**

21. Defendants agree to refrain, and to be permanently enjoined, from violating K.S.A. 50-639, and specifically from using “WITH ALL FAULTS” and “AS IS” language in any consumer transaction.

22. Defendants agree to refrain, and to be permanently enjoined, from violating 16 C.F.R. §455, requiring use of the “Buyers Guide” that impose implied warranties of merchantability consistent with Kansas law, K.S.A 50-639.

23. Defendants agree to refrain, and to be permanently enjoined, from engaging in Unconscionable Acts and Practices, as set out in K.S.A. 50-627, and Deceptive Acts and Practices, as set out in K.S.A. 50-626.

24. Defendants agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

25. Defendants agree to comply with all Kansas statutes, rules and regulations, applicable to consumer transactions in Kansas, specifically, but not limited to, the KCPA, K.S.A. 50-623, *et seq.* and all Chapter 8, Kansas statutes, rules and regulations, including but not limited to dealer licensing, sales, sales reporting, motor vehicle examination, salvage vehicles; titles and registration.

26. Defendants agree to cooperate fully with the Office of the Kansas Attorney General in investigating and remedying any consumer complaints filed with the Consumer Protection Division against Defendants. Defendants must provide truthful and complete information responsive to consumer complaints. Defendants will provide the Office of the Attorney General with notice of any claim for restitution made to Defendants.

27. Defendants agree 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.

28. Defendants agree 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.

29. 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.

## **MONETARY JUDGMENT**

30. Judgment is hereby entered in favor of Plaintiff and against Defendants in the amount of \$161,000, which consists of payment of civil penalties in the sum of \$131,000 and enhanced civil penalties in the sum of \$30,000 for violations of the KCPA, pursuant to K.S.A. 50-636. However, \$131,000 of the \$161,000 monetary judgment shall be suspended against Defendants as long as the Court makes no finding, as provided in the following section of this Consent Judgment titled “Right to Reopen,” that Defendants have violated any provision of this Consent Judgment, including Defendants’ payment of \$30,000, which shall be paid at the time of filing this consent judgment.

31. Judgment is hereby entered in favor of Plaintiff and against Defendants in the amount of \$10,000 for the payment of investigative costs incurred.

32. Payment of civil penalties, investigative fees and restitution shall be made at the time of the filing of this consent judgment in the form of a cashier’s check, money order or other certified funds payable to the Office of the Kansas Attorney General, marked **CP-16-2291** and delivered to:

Melanie Jack, Assistant Attorney General  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, KS 66612

## **RIGHT TO REOPEN**

33. Plaintiff’s agreement to suspend a portion of the monetary judgment is expressly premised upon Defendants’ material compliance with the terms of this Consent Judgment.

34. Defendants’ “material compliance” with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 19-32.

36. If, upon motion by Plaintiff, the Court finds that Defendants have violated a material term of this Consent Judgment, the suspension of the monetary judgment will be terminated and the entire judgment amount of \$131,000 shall become immediately due and payable by Defendants, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

37. Defendants agree 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.

38. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

### **OTHER PROVISIONS**

39. As part of and subject to this consent judgment Defendants agree to dismiss with prejudice *Central RV, Inc. and Nicholas Ford v. Troopers Albers and MacEwan and State of Kansas*, 2017-CV-000072, pending in the Fourth Judicial District, Franklin County and *Central RV, Inc. and Nicholas Ford v. Kansas Department of Revenue, Mark Schemm, and State of Kansas*, 2019-CV-002, pending in the Fourth Judicial District, Franklin County. Each party will bear its own costs and attorney fees. A Joint Stipulation for Dismissal with Prejudice and an Order of Dismissal with Prejudice in 2017-CV-00072 and 2019-CV-002, will be executed and filed by Defendants within five (5) days of filing this consent judgment.

40. 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.

41. 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.

42. Compliance with this Consent Judgment does not relieve Defendants 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.

43. 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 Defendants nor shall Defendants 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.

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

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

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulation and agreement of the parties contained herein are adopted and approved by the Court.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** the acts recited herein are declared to be unfair and deceptive acts and practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants and in favor of Plaintiff in the amount of one hundred thirty one thousand dollars (\$131,000.00) in civil penalties which amount shall be suspended against Defendants as long as the Court makes no finding that Defendants have violated any provision of this Consent Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants and in favor of Plaintiff in the amount of thirty thousand dollars (\$30,000.00) in enhanced civil penalties which shall be paid upon filing the Consent Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants pay investigation fees and expenses of ten thousand dollars (\$10,000.00), which shall be paid upon filing the Consent Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendants pay consumer restitution of three hundred fifty two dollars and eleven cents (\$352.11) to the Kansas consumers named in the petition filed herein and paid upon filing the Consent Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants shall be held jointly and severally liable for the aforementioned violations of the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

**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.**

**THIS ORDER IS EFFECTIVE ON THE DATE AND TIME SHOWN BY THE ELECTRONIC FILE STAMP.**

Prepared and approved by:

**PLAINTIFF:**



Derek Schmidt, KS #17781  
Attorney General  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-2215

**DEFENDANTS:**

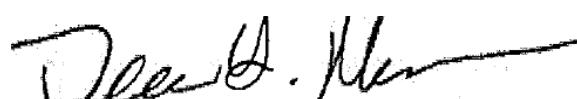


Nicholas Ford  
On his own behalf and as  
President on behalf of  
Central RV, Inc.



Melanie Jack, KS #13213  
Assistant Attorney General  
Office of the Attorney General  
Consumer Protection Division  
120 SW 10th Ave., 2nd Floor  
Topeka, Kansas 66612-1597  
Tel: 785-296-3751  
Fax: 785-291-3699  
[melanie.jack@ag.ks.gov](mailto:melanie.jack@ag.ks.gov)

*Attorneys for Plaintiff*



Derek H. MacKay #23213  
Trent R. Church, #23921  
Knight Nicastro, LLC  
304 West 10<sup>th</sup> Street  
Kansas City, MO 64105  
Phone: (816) 377-9130  
Phone: (816) 679-6407  
Fax: (303) 845-9299  
[mackay@knightnicastro.com](mailto:mackay@knightnicastro.com)  
[church@knightnicastro.com](mailto:church@knightnicastro.com)

*Attorneys for Defendants*