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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2021-CV-000264



Court: Shawnee County District Court
Case Number: 2021-CV-000264
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Genesis Health Club
Type: Consent Judgment

SO ORDERED.

A handwritten signature in cursive script, reading "M E Christopher".

/s/ Honorable Mary E Christopher, District Judge

Kathryn Carter, #12969
 Deputy Attorney General
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 Consumer Protection Division
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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
 Third Judicial District**

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
 v.)
)
GENESIS HEALTH CLUBS MANAGEMENT, INC.,)
a Corporation)
)
Defendant.)

**Case No. 2021-CV-000264
 Division No.**

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

CONSENT JUDGMENT

COMES NOW BEFORE THE COURT Plaintiff's Petition for Approval of 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 Deputy Attorney General Kathryn Carter. Defendant appears by undersigned counsel.

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. Genesis Health Clubs Management, Inc. is a Kansas corporation with its registered office located at 6100 E. Central, Bldg. 3, Wichita, Kansas 67208.

4. At all times relevant hereto, Defendant conducted business in multiple counties throughout the State of Kansas, including Shawnee County.

5. All references to Defendant herein include acts performed individually, in concert, or by or through employees, representatives, assignees, successors, or by or through agents or affiliates working under an agreement with Defendant to provide Defendant's services in Kansas.

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

7. Defendant stipulates and admits that venue is proper in this Court pursuant to K.S.A. 50-638(b).

ALLEGATIONS

8. Plaintiff alleges that, at all times relevant hereto, Defendant acted as a "telephone solicitor" in Kansas, as that term is defined by K.S.A. 50-670(a)(4).

9. Plaintiff alleges that, at all times relevant hereto, Defendant engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

10. Plaintiff alleges that Defendant, at all times relevant hereto, contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant's products and services.

11. Plaintiff alleges that, at all times relevant hereto, Defendant caused 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. 50-670a(c) and failed to have a written policy and practice for the maintenance and use of an internal do-not-call list pursuant to 47 C.F.R. § 64.1200(d).

12. Plaintiff alleges that violations of K.S.A. 50-670a(c), set out in paragraph eleven (11), constitute violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-670(g).

13. In the wake of Plaintiff's investigation, Defendant informs the Court that it has expended significant time and resources to establish a customer relationship management system designed to facilitate compliance with the National Do Not Call Registry and its associated federal and state statutes and regulations. Defendant has also allocated significant time and resources establishing internal procedures and protocols, including the training of staff, in a manner intended to ensure, to the maximum extent possible, full compliance with the federal and state statutes and regulations governing the National Do Not Call Registry.

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

15. Defendant does not admit, and pursuant to K.S.A. 50-632(b), is not deemed to admit, the alleged violations set forth above.

INJUNCTIVE RELIEF

16. Defendant agrees to, and is ordered to, refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph eleven (11), 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 if deemed as such by this Court.

17. Defendant agrees to, and is ordered to, refrain, and to be permanently enjoined, from making or causing to be made, unsolicited consumer telephone calls, as defined by K.S.A. 50-670(a)(3), to any Kansas consumer.

18. Defendant agrees to, and is ordered to, comply with the Telephone Consumer Protection Act, 47 U.S.C. § 227, Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.*, and all federal regulations promulgated thereby, specifically including the Telemarketing Sales Rule, 16 C.F.R. § 310.4 and 47 C.F.R. § 64.1200.

19. Defendant agrees to, and is ordered 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.*

20. Defendant agrees to, and is ordered to, expeditiously resolve the institutional issues that result in “billing after cancelling” complaints, within no more than thirty days from the filing of this consent judgment.

21. Defendant agrees to, and is ordered to, take no credit card or banking information from Consumers in connection with “free” or “won” or “trial” memberships.

22. Defendant agrees that Consumer complaints forwarded from the office of the Attorney General shall be given priority problem resolution by Genesis Health Clubs Management, Inc., within no more than thirty days from the receipt of the complaint by Defendant.

23. Defendant agrees to, and is ordered to, highlight and require Consumer initials for contracts terms relating to:

- a. Payments, and
- b. Cancellation terms, and
- c. Notice that verbal terms and promises are meaningless;

24. Except as provided otherwise in paragraph twenty-five (25), Defendant agrees to, and is ordered to, provide to Consumers copies of paper contracts at the time of execution, unless such Consumer has affirmatively waived his/her right to a paper copy and agreed, in writing, instead to receive a copy via electronic delivery (e.g., e-mail).

25. In the event a Consumer signs up for a membership over the Internet, Defendant may provide that Consumer a copy of the executed contract via electronic delivery (e.g., e-mail).

26. Except as provided otherwise in paragraph twenty-five (25), Defendant agrees to, and is ordered to, provide to Consumers, within seven days, paper copies of all electronic forms executed by Consumers unless such Consumer has affirmatively waived his/her right to a paper copy and agreed, in writing, instead to receive a copy via electronic delivery (e.g., e-mail).

27. Defendant agrees to, and is ordered 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. Defendant shall require its employees, agents, independent contractors, and representatives, specifically by amending or updating its training and compliance materials, to comply with the terms set forth in this Consent Judgment within thirty (30) days of the execution of this Consent Judgment.

29. Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, representatives, assignees, successors, or agents or affiliates working under an agreement with Defendant to provide Defendant services in Kansas.

INVESTIGATIVE FEES AND CIVIL PENALTIES

30. Defendant agrees to judgment being entered in favor of Plaintiff in the amount of fifteen thousand dollars (\$15,000.00) in No Call investigative fees pursuant to K.S.A. 50-670(g) and 50-632(c)(7).

31. Payment shall be 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-15-3667** and delivered to:

Office of the Kansas Attorney General
Attn: DAG Kathryn Carter
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

OTHER PROVISIONS

32. 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.

33. 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.

34. 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.

35. 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 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.

36. Plaintiff agrees to release and discharge Defendant from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees for the acts alleged in paragraph 11 that occurred prior to the effective date of this agreement, to wit: violation of K.S.A. 50-670a(c) and 47 C.F.R. § 64.1200(d).

37. The Attorney General shall monitor Defendant's compliance with the terms and provisions of this judgment, and Defendant will cooperate with monitoring, for a period of five (5) years from the effective date of this judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the orders of the Court, and any monies owed hereunder by Defendant immediately become a judgment upon

filing whereby Plaintiff is to file a satisfaction of the monetary component of such judgment upon it receiving cleared funds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$15,000.00.

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.

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

Prepared and approved by:

PLAINTIFF:


/s/Derek Schmidt

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/s/Kathryn Carter

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DEFENDANT:



Rodney L. Steven II


President

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Attorney for Defendant