



Court: Shawnee County District Court
Case Number: 2021-CV-000658
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Aureliano Pena
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

Melanie Jack #13213
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
melanie.jack@ag.ks.gov

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
v.)	2021-CV-00658
)	
)	
AURELIANO PENA, an individual,)	
d/b/a AURELIO’S HOME IMPROVEMENT,)	
)	
Defendant.)	
<hr/>		
(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, appears by Assistant Attorney General Melanie S. Jack. The Defendant, Aureliano Pena, d/b/a Aurelio’s Home Improvement (“Defendant”) appear by counsel Vincent M. Cox.

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 Aureliano Pena is an individual with a residential address in Liberal, Kansas.

4. Defendant Aureliano Pena is doing business as Aurelio's Home Improvement, a residential repair and remodeling business that has never been registered with the Kansas Secretary of State.

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

ALLEGATIONS

6. Defendant has acted as a "supplier" in Kansas, as that term is defined by K.S.A. §50-624(l).

8. Defendant has engaged in "consumer transactions" as that term is defined by K.S.A. §50-624(c).

9. Defendant has engaged in consumer transactions with Kansas "consumers," as that term is defined in K.S.A. § 50-624(b).

10. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

11. Plaintiff alleges that at all times relevant hereto, Defendant engaged in unfair and deceptive acts and practices in violation of the Kansas Consumer Protection Act, ("KCPA") K.S.A. §50-623, *et seq.* as follows:

Defendant knowingly or with reason to know entered into a consumer transaction with J.S. and willfully used an oral or written misrepresentation of an exaggeration, falsehood, innuendo or ambiguity as to a material fact regarding completion of construction on the consumer's property, pursuant to K.S.A. § 50-626(b)(2);

Defendant knowingly or with reason to know entered into a consumer transaction with J.S. and willfully misrepresented repair of the consumer's property as being of a particular standard, quality, grade, style, or model which differs materially from the representation, pursuant to K.S.A. § 50-626(b)(1)(D).

Defendant knowingly or with reason to know entered into a consumer contract with J.S. and willfully failed to state a material fact, or willfully concealed, suppressed, or omitted a material fact, pursuant to K.S.A. § 50-626(b)(3).

Defendant knowingly or with reason to know entered into a consumer contract with J.S. and willfully took advantage of the consumer's inability to protect the consumer's interests due to a physical infirmity, ignorance, and inability to understand the language of the agreement and other factors, pursuant to K.S.A. § 50-627(b)(1).

12. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law, solely for the purpose of settlement and without admitting, any allegations contained herein. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by Defendant of a violation of the Kansas Consumer Protection Act.

INJUNCTIVE RELIEF

13. 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.*

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

15. 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.

16. 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.

17. 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.

MONETARY RELIEF

18. Defendant agrees to pay ten thousand dollars (\$10,000.00) for restitution and one thousand dollars (\$1,000.00) for investigation fees for a total of eleven thousand dollars (\$11,000.00) in monetary judgment.

19. Defendant shall pay five thousand dollars (\$5,000.00) for restitution at the time of execution of this agreement.

20. Beginning on July 1, 2022, Defendant shall make monthly payments sent to the Office of the Attorney General in the total amount of three hundred dollars (\$300.00) per month for 16 months for payment of restitution. The last restitution payment will be two hundred dollars (\$200.00) and one hundred dollars (\$100.00) for investigation fees. Thereafter, Defendant shall make three monthly payments of three hundred dollars (\$300.00) for the balance of investigation fees.

21. Payments are due the first of each month. Failure to make a monthly payment by the 15th of the month shall be considered late, in violation of this Consent Judgment, and subject the Right to Reopen as set forth below.

22. If, upon motion by Plaintiff, the Court finds that Defendant has violated a material term of the Consent Judgment including the payment plan, the entire judgment amount for the balance of restitution and investigation fees shall become immediately due and payable by Defendant.

23. Defendant understands upon motion by Plaintiff that this Court could impose civil penalties for violation of the consent judgment and/or contempt, including imposition of a permanent restraining order.

24. Defendant understands payment of restitution does not release any claims the consumer J.S. may pursue for damages that exceed the restitution amount obtained in this agreement.

25. All payments will be in the form of a cashier's check, money order or other certified funds. Restitution is payable to J.S. and investigation fees are payable to the Office of the Kansas Attorney General, marked CP-21-002717 and mailed to:

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

RIGHT TO REOPEN

26. Plaintiff's agreement to allow monthly payments is expressly premised upon Defendant's material compliance with the terms of this Consent Judgment.

27. Defendant's "material compliance" with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 13-25.

28. If, upon motion by Plaintiff, the Court finds that Defendant has violated a material term of this Consent Judgment the entire judgment amount of \$11,000.00, the balance of restitution and investigation fees, shall become immediately due and payable by Defendant, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

OTHER PROVISIONS

29. 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.

30. 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.

31. 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 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.

32. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the Defendant's business practices, nor shall the Defendant 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 Defendant, 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.

33. 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.

34. Defendant hereby represents and warrants that Defendant 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 breach hereunder.

35. Defendant represents that Defendant has read the Consent Judgment and know and understand the contents thereof. Defendant further represent and warrant that Defendant Aureliano Pena is signing this Consent Judgment as the result of his own free act, and that Defendant Aureliano Pena 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.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the acts recited herein are declared to be deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626 and 50-627.

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 Defendant immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant to pay the total amount of eleven thousand dollars (\$11,000.00) in consumer restitution and investigation fees.

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.

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

Attorneys for Plaintiff

Prepared and approved by:

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

/s/ *Melanie S. Jack* _____
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
Tel: 785-296-3751
Fax: 785-291-3699
melanie.jack@ag.ks.gov

For Defendant

Approved by:

Aureliano Pena
d/b/a Aurelio's Home Improvement


Vincent M. Cox # 22051
Attorney for Defendant