



Court: Douglas County District Court
Case Number: 2018-CV-000083
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Alenco, Inc.
Type: Consent Judgment

SO ORDERED.



A handwritten signature in cursive script, reading "Amy J Hanley".

/s/ Honorable Amy J Hanley

Kathryn Carter, #12969
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
Kate.Carter@ag.ks.gov

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
Division 1

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2018-CV-83
)	
ALENCO, INC.)	
)	
Defendant.)	
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(Pursuant to K.S.A. Chapter 60)		

CONSENT JUDGMENT

On this date Plaintiff's Petition to Approve 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 Assistant Attorney General Kathryn Carter. Defendant appears by and through Michelle M. Suter, Commercial Law Group, P.A.

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. Defendant Alenco, Inc. is a Kansas corporation with a principal place of business at 16201 W. 110th Street, Lenexa, Kansas 66219.

4. All references to Defendant herein include acts performed individually, in concert, or by or through owners, managers, agents, employees, representatives, affiliates, assignees and successors of Defendant.

5. The Court has personal and subject matter jurisdiction.

6. Venue is proper in this Court pursuant to K.S.A. 50-638(b).

PLAINTIFF'S ALLEGATIONS

7. Plaintiff alleges that, from March 14, 2012 through March 18, 2015, Defendant acted as a "supplier" in Kansas, as that term is defined by K.S.A. 50-624(1).

8. Plaintiff alleges that, from March 14, 2012 through March 18, 2015, Defendant engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. 50-624(c).

9. Plaintiff alleges that, from March 14, 2012 through March 18, 2015, Defendant acted as a "telephone solicitor" in Kansas, as that term was previously defined at K.S.A. 50-670(a)(3) and is currently defined by K.S.A. 2015 Supp. 50-670(a)(4).

10. Plaintiff alleges that, from March 14, 2012 through March 18, 2015, Defendant engaged in "consumer telephone calls" in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

11. Plaintiff alleges that Defendant, from March 14, 2012 through March 18, 2015, contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant's products and services.

12. Plaintiff alleges that, from March 14, 2012 through March 18, 2015, Defendant, by conducting the aforementioned solicitations in Kansas, violated the Kansas No Call Act, K.S.A. 50-670 *et seq.*, which alleged violations include, but are not limited to:

- a. failing to consult the National Do Not Call Registry prior to making unsolicited consumer telephone calls in Kansas, in violation of K.S.A. 50-670a(a); and
- b. making, or causing 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);

13. Plaintiff alleges that those acts set out in paragraph twelve (12) constitute unconscionable acts, in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-670(g).

COMPROMISE RESOLUTION

14. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purpose of settlement and without agreement as to the truth of any allegations made; without agreement as to whether there is or could be evidence to prove any allegations; without agreement as to whether Defendant is or could be liable for any alleged violations and without agreement as to any defenses thereto. Defendant categorically denies each and every allegation set out herein.

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

INJUNCTIVE RELIEF

16. For purposes of avoiding unnecessary costs and expenses in connection with the allegations, Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph twelve (12), 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.

17. Defendant agrees to advise its employees having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of the Court's approval of this Consent Judgment, and within 15 days after any person assumes such position and responsibilities.

18. Defendant shall require its independent contractors having responsibilities with respect to the subject matter of this Consent Judgment to comply with the terms set forth in this Consent Judgment.

19. Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its owners, employees, agents, representatives, affiliates, assignees and successors.

CIVIL PENALTIES

20. Defendant agrees to pay to the Office of the Kansas Attorney General one thousand dollars (\$1,000.00) in civil penalties for violations of the Kansas No Call Act, pursuant to K.S.A. 50-670(g) and K.S.A. 50-636(a).

21. Prior receipt of payment in full is acknowledged by the parties.

OTHER PROVISIONS

22. 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 enforcement of compliance herewith by or against either party, and for the punishment of violations thereof.

23. 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.

24. Compliance with this Consent Judgment does not relieve the 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.

25. 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 the Defendant nor shall the Defendant represent the Consent Judgment 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.

26. Each signatory hereof warrants and represents that he or she is vested with authority for the entity so designated to be bound hereby.

RELEASE

27. Plaintiff agrees to release and discharge Defendant from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees under the Kansas No Call Act, K.S.A. 50-670 *et seq.*, or the Telemarketing Sales Rule, 16 C.F.R. 310 *et seq.*, based on Defendant's conduct during the period from March 14, 2012 through March 18, 2015.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court, that the acts of the Defendant are declared unconscionable acts and violations of the Kansas Consumer Protection Act, and any monies owed hereunder by Defendant immediately become a judgment upon filing.

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 AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE STAMP.

Prepared and submitted by PLAINTIFF:

/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/ Kathryn Carter
Kathryn Carter, #12969
Assistant Attorney General
Office of the Kansas Attorney General
Consumer Protection Division
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-1597
Tel: 785-296-3751
Fax: 785-291-3699
Kate.Carter@ag.ks.gov
Attorney for Plaintiff

Approved by DEFENDANT:



Abraham J. Eller, General Manager

3.12.18
Date

COMMERCIAL LAW GROUP, P.A.
4701 College Blvd., Suite 204
Leawood, Kansas 66211
suter@commerciallawgroup.net
v. 913.345.8855 / f. 913.345.8352



Michelle M. Suter—KS#12892 MO#43620

3-12-18
Date