

Sarah M. Dietz, #27457
Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612
(785) 296-3751
Fax: (785)-291-3699
Sarah.dietz@ag.ks.gov

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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)

Plaintiff,)

v.)

Case No. 2017-CV-586

Division No. 7

SUNIL PAHOUJA, an individual)

and)

SMART CLUB, LLC)

aka SMART CLUB, LLC)

and)

AROMA SENSES, LLC)

Defendants)

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

**ORDER FOR SUMMARY JUDGMENT, AS TO THE DEFENDANT SMART CLUB,
LLC A/K/A SMART CLUB, LLC**

Comes now before the Court on Plaintiff's Motion for Summary Judgment. Plaintiff, State of Kansas, ex. rel. Derek Schmidt, Attorney General, through and by counsel, Assistant Attorney General Sarah M. Dietz, filed its motion for summary judgment and memorandum in support.

Defendant Smart Club, LLC a/k/a Smart Club, LLC ("Defendant") did not file a response to Plaintiff's motion for summary judgment. Therefore, pursuant to Rule 141 of the Kansas

Supreme Court Rules, the statement of uncontroverted facts are deemed admitted as to Defendant. Therefore, pursuant to Rule 141, the statement of uncontroverted facts are deemed admitted as to Defendant.

WHEREUPON, the Court, after having reviewed the submissions of record in this matter and after having reviewed Plaintiff's Memorandum in Support of its Summary Judgment Motion, finds that Plaintiff's Motion for Summary Judgment should be granted, and makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Door to Door Transactions.

1. Defendant engaged in the business of acting in the capacity of a supplier within the State of Kansas around June of 2015. During that time period Defendant contracted with the KANSAS EXPOCENTRE in Topeka, Kansas to host a liquation sales event.

2. Defendant has conducted business as \$mart Club, LLC also known as Smart Club, LLC, in Kansas since at least June of 2015.

3. Defendant is a seller as defined by K.S.A. 50-901(g).

4. Defendant made or caused to be made "consumer transactions" as defined by K.S.A. 50-624(c).

5. Defendant was aware at all times relevant hereto, that deceptive or unconscionable practices during the course of consumer transactions are prohibited by law in the State of Kansas.

6. From June 10, 2015 to June 15, 2015, Defendant made or caused to be made the aforementioned door-to-door solicitations and hosted a liquidation sales event, at the Kansas Expocentre.

7. Defendant sold items at the liquidation sale to at least seventy (70) Kansas consumers.

8. Defendant did not provide notice of the consumer's three day right to cancel the transaction.

9. The sales receipts from the Defendant's transactions did not include notice of the consumer's right to cancel, pursuant to K.S.A. 50-640(b)(1) and (b)(2).

10. Defendant did not orally inform consumers of their right to cancel the transaction, pursuant to K.S.A. 50-640.

11. None of the transactions listed above were made and consummated entirely by mail or telephone and without any other contact between the consumer and Smart Club, LLC prior to the sale.

B. Litigation History.

12. On September 7, 2017, Plaintiff filed its petition alleging Smart Club, LLC a/k/a Smart Club, LLC ("Defendant") engaged in Door to Door Sales, as defined by K.S.A. 50-640(c)(1), but failed to follow the requirements of merchants engaged in Door to Door Sales, as set out at K.S.A. 50-640(b) and failed to comply with the Kansas Consumer Protection Act ("KCPA") as set out in K.S.A. 50-626 and K.S.A. 50-627 et seq. The allegations contained in the petition were based on evidence gathered from an investigation beginning in 2015, initiated after numerous consumer complaints. The petition recited seventy one (70) statutory violations of the KCPA.

13. The Defendant Smart Club, LLC failed to file an answer to the Petition. On October 16, 2017, because the time had run for Defendant Smart Club, LLC to respond, Plaintiff filed a Motion for Default Judgment against the Defendant Smart Club, LLC.

14. Plaintiff withdrew the Motion for Default Judgment on October 31, 2017 in an attempt to work out a settlement with Defendant's attorney.

15. On January 16, 2018, Defendant filed an answer to the petition, in which it entered:

- a. Defendant admits Plaintiff's Petition ¶ 1, 2, 4, 6, 11, 13;
- b. Defendant denies Plaintiff's Petition ¶ 5-9, 15, 17, 18, 20-23;
- c. Defendant partially admits and partially denies Plaintiff's Petition ¶ 3, 10, 14, 16;

16. On June 5, 2018, Plaintiff served upon Defendant Plaintiff's First Request for Admissions.

17. More than 30 days passed since service of the Request for Admissions, and Defendant never filed a response to the Request for Admissions.

18. On July 25, 2018, Plaintiff filed its Motion for Summary Judgment and Memorandum in Support.

19. On August 2, 2018, the Motion for Summary Judgment and Memorandum in Support were served to the Defendant via certified mail.

CONCLUSIONS OF LAW

1. Defendant held a liquidation sale in which Kansas consumers purchased goods at the Kansas Expocentre.

2. Defendant used, or caused to be used, exaggeration, falsehood, innuendo, or ambiguity as to a material fact regarding the products purchased pursuant to K.S.A. 50-626(b).

3. Defendant failed to provide consumers with a written notice of their right to cancel the transaction, and failed to give the consumers a Notice of Cancellation form on at least seventy (70) occasions, in violation of K.S.A. 50-640(b).

4. Defendant violations of K.S.A. § 50-640(b) is a deceptive or unconscionable act or practice.

5. Defendant deceptive or unconscionable acts or practices are distinct violations for which the court should assess a penalty in the amount of \$1,000.00 per violation, pursuant to K.S.A. § 50-636.

6. Seventy (70) violations of the Kansas Consumer Protection Act by engaging in Door to Door Sales, as defined by K.S.A. 50-640(c)(1) without providing the three day right to cancel required by K.S.A. 50-640(b)(1), and committing 70 instances of unfair and deceptive acts or practices, pursuant to K.S.A. 50-640(b). *See* Plaintiff's September 9, 2017 Affidavit Exhibit 4.

7. Defendant shall be held jointly and severally liable for the aforementioned violations of the Kansas Consumer Protection Act, K.S.A. § 50-636.

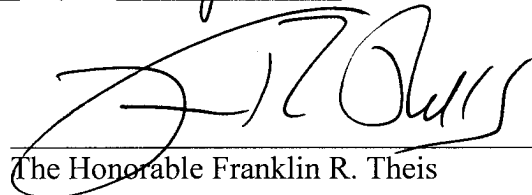
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

A. Defendant's acts and practices, as set forth above, are found to be deceptive and unconscionable in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1);

B. Defendant and Defendant's employees and agents are permanently enjoined from these and other practices in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(2);

- C. Defendant is permanently enjoined from doing business in the State of Kansas, pursuant K.S.A. 50-636(c).
- D. The Defendant is assessed a \$70,000 civil penalty for violations of the Kansas Consumer Protection Act, jointly and severally liable with other defendants.
- E. Defendant is ordered to pay reasonable expenses and investigative fees, in the amount \$8,831.25 to the Office of the Kansas Attorney General as provided by K.S.A. 50-636(c), court costs and all costs associated with distributing and executing on any judgment made by this Court.

IT IS SO ORDERED, this 24th day of September, 2018.


The Honorable Franklin R. Theis

Respectfully Submitted,

/s/ Sarah M. Dietz
Sarah M. Dietz KS#27457
Assistant Attorney General
Office of the Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612-15 97
Tel: 785-296-3751
Fax: 785-291-3699
sarah.dietz@ag.ks.gov