

ELECTRONICALLY FILED
2017 Jun 15 PM 3:55
CLERK OF THE SEDGWICK COUNTY DISTRICT COURT
CASE NUMBER: 2017-CV-001382-OT



Court: Sedgwick County District Court
Case Number: 2017-CV-001382-OT
Case Title: State of Kansas ex rel Derek Schmidt, Atty General
vs. Isaac Duncan
Type: Consent Judgment

SO ORDERED.

A handwritten signature in cursive script that reads "Warren M. Wilbert".

/s/ Honorable Warren Wilbert

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 SEDGWICK COUNTY, KANSAS
Division 25

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2017-CV-1382-OT
)	
ISAAC DUNCAN, AN INDIVIDUAL,)	
DBA WRITE CONTRACTING GROUP)	
)	
Defendant.)	

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

CONSENT JUDGMENT

COMES NOW BEFORE THE COURT Plaintiffs Petition for Approval of Consent Judgment pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rei.* Derek Schmidt, Attorney General, appears by and through Assistant Attorney General Kathryn Carter. There are no other appearances.

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. Isaac Duncan is an individual residing in Sedgwick County Kansas. He owns and operates a business, to wit: Write Contracting Group, which has a principal office located at 1202 E. Kechi Road in Kechi, Kansas.

4. Defendant conducts business in various counties throughout the state of Kansas and, at all times relevant hereto, engaged in telephone solicitation directed at consumers residing in various counties throughout the State, specifically including Harvey County.

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

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.

ALLEGATIONS

8. Plaintiff alleges that, at all times relevant hereto, Defendant has acted as a "supplier" in Kansas, as that term is defined by K.S.A. 50-624(1).

9. Plaintiff alleges that, at all times relevant hereto, Defendant has engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. 50-624(c).

10. Plaintiff alleges that, at all times relevant hereto, 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. 2016 Supp. 50-670(a)(4).

11. 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).

12. 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.

13. Plaintiff alleges that, at all times relevant hereto, Defendant, while conducting the aforementioned solicitations in Kansas, engaged in acts and practices in violation of the Kansas No Call Act, K.S.A. 50-670 *et seq.*, which acts and practices 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);

14. Those acts set out in paragraph thirteen (13) constitute violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-670(g).

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

INJUNCTIVE RELIEF

16. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph thirteen (13), 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 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.* and the Kansas No-Call Act, K.S.A. 50-670, *et seq.*

18. Defendant agrees to comply with the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §6101 *et seq.*, and all federal regulations promulgated thereby, including the Telemarketing Sales Rule, 16 C.P.R. §310 *et seq.*

19. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division against Defendant.

20. Defendant agrees 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.

21. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each 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.

22. Defendant shall require its independent contractors to comply with the terms set forth in this Consent Judgment.

23. 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.

**INVESTIGATIVE FEES AND CIVIL
PENALTIES**

24. Defendant agrees to pay to the Office of the Kansas Attorney General two thousand five hundred dollars (\$2,500.00) in investigative fees for violations of the Kansas No Call Act, pursuant to K.S.A. 50-670(g), K.S.A. 50-670a(i) and K.S.A. 50-632(a)(4). Upon receipt of payment in full, 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.P.R. §310 *et seq.*, based on Defendant's conduct prior to the date of entry of this Consent Judgment.

25. Payment 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-16-2391 and delivered to:

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

**OTHER
PROVISIONS**

26. 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.

27. 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.

28. 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.

29. 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.

30. Defendant represents that he has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

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 and any monies owed hereunder by Defendant immediately become a judgment upon filing. The acts and practices alleged herein are declared to be unconscionable acts and practices, pursuant to K.S.A. 50-670(g) and, further, to be violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-627.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment ts entered against Defendant and in favor of Plaintiff in the amount of \$2,500.00.

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

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, KS#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
Attorney for Plaintiff

DEFENDANT:

A handwritten signature in blue ink, appearing to be 'ID', enclosed in a light gray rectangular box.

Isaac Duncan
DBA Write Contracting Group