

ELECTRONICALLY FILED
2017 Nov 08 AM 9:36
CLERK OF THE POTTAWATOMIE COUNTY DISTRICT COURT
CASE NUMBER: 2017-CV-000049



Court: Pottawatomie County District Court
Case Number: 2017-CV-000049
Case Title: State of Kanas ex rel Derek Schmidt Atty General
vs. James W. Sperman
Type: Consent Journal Entry

SO ORDERED.

A handwritten signature in cursive script that reads "Jeff Elder".

/s/ Honorable Jeff Elder, District Court Judge

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
POTTAWATOMIE COUNTY, KANSAS**
Division _____

STATE OF KANSAS, *ex rel.*,)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
vs.)
)
JAMES W. SPERMAN,)
d/b/a GREENFIN GARDENS,)
)
Defendant.)
)

Case No. 2017-CV-49

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this date, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Melanie Jack, Assistant Attorney General. Defendant GreenFin Gardens appears by James W. Sperman ("Defendant").

The parties advise the Court that they have stipulated and agreed to the following matters:

1. Derek Schmidt is the duly appointed, qualified and acting Attorney General of 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, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* ("KCPA"), specifically K.S.A. 50-632(b).
3. Defendant resides at and has a principle place of business at 3935 Flush Road, Saint George, Pottawatomie County, Kansas.

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

5. The Court has subject matter and personal jurisdiction pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

6. Venue is proper under K.S.A. 50-638(b) in the Second Judicial District, Pottawatomie County, Kansas.

7. Defendant sells fish and fig cuttings and trees to consumers.

8. At all times relevant hereto, Defendant has acted as a "supplier" as defined by K.S.A. 50-624(l).

9. At all times relevant hereto, Defendant has engaged in "consumer transactions" as defined by K.S.A. 50-624(c).

ALLEGATIONS

10. The Plaintiff alleges that Defendant engaged in unconscionable and deceptive acts or practices in violation of the Kansas Consumer Protection Act. The Plaintiff alleges Defendant committed acts and practices in violation of the KCPA, including, but not limited to:

Willfully omitted material facts of consumer transactions in violation of K.S.A. §50-626(b)(3).

11. 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 allegation contained herein.

INJUNCTIVE RELIEF

12. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be unlawful and deceptive in Paragraph

Ten (10) of this Consent Judgment. Defendant will accept payment for a consumer transaction only when Defendant has sufficient stock to promptly fill the order.

Defendant will no longer accept payment for advance orders in which the merchandise will not be available for prompt delivery. Defendant agrees to modify its business policies and make them available on GreenFinGardens.com and Figcutting.com.

Defendant agrees to change the websites to reflect these policies.

13. Defendant agrees that by entering into this Consent Judgment he is not admitting to guilt and signing the agreement is not an admission of guilt.

14. Defendant agrees to comply with the provisions of the KCPA, K.S.A. 50-623 *et seq.*

15. Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order and civil penalties will be imposed for each subsequent violation.

16. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure(s), for the purpose of avoiding compliance with the terms of this Consent Judgment.

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

RESTITUTION, INVESTIGATIVE FEES AND CIVIL PENALTIES

18. Defendant further agrees to make full restitution to consumers:

- Jeffrey Ortega in the amount of \$201.00;
- Tammatha O'Brien in the amount of \$396.00;

- Michael Kessler in the amount of \$51.00;
- Alison Miller in the amount of \$51.00.

Payment of restitution shall be made by providing satisfactory proof of refund to Amanda Crutchfield, Investigator, Attorney General of the State of Kansas, by October 31st, 2017.

19. Defendant shall pay the costs of the sworn statement taken on August 17, 2017, as part of the Attorney General's investigation, in the amount of \$275.00. Defendant shall pay this amount by November 17, 2017. Payment from Defendant shall be made in the form of a cashier's check or money order made payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General
ATTN: Melanie Jack, Assistant Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612-1597

20. Failure by the defendant to make any payment or proof of payment by the above due dates shall trigger an acceleration clause whereby all outstanding payments become due to Plaintiff no later than ten (10) calendar days after the failure to comply.

GENERAL PROVISIONS

21. The provisions of this Consent Judgment shall be applicable to Defendant and every employee, agent or representative of Defendant.

22. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

23. This Court shall retain jurisdiction 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 or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.

24. 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.

25. 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.

26. The parties understand that this Consent Judgment shall not be construed as an approval or sanction by the Kansas Attorney General of the business practices of Defendant nor shall Defendant represent the decree of such 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.

27. Defendants agree that pursuant to 11 U.S.C. 523(a)(2)(A) and 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements 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.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant make restitution to the consumers listed below and provide satisfactory proof of refunds to Amanda Crutchfield, Investigator, Attorney General of the State of Kansas, by October 31st, 2017.

- Jeffrey Ortega in the amount of \$201.00;
- Tammatha O'Brien in the amount of \$396.00;
- Michael Kessler in the amount of \$51.00;
- Alison Miller in the amount of \$51.00.

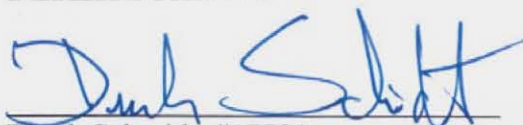
Defendant shall pay investigative costs of \$275.00 to the Office of the Kansas Attorney General by November 17, 2017.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, 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.

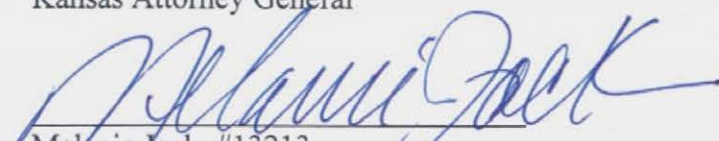
DISTRICT COURT JUDGE

Prepared and approved by:

**OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT**

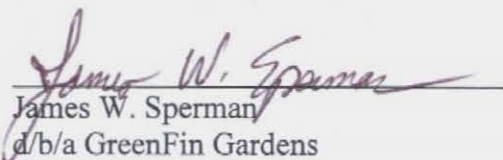


Derek Schmidt, #17781
Kansas Attorney General



Melanie Jack, #13213
Assistant Attorney General
Office of Kansas Attorney General Derek Schmidt
120 Southwest 10th Ave., 2nd Floor
Topeka, Kansas 66612

Attorneys for Plaintiff



James W. Sperman
d/b/a GreenFin Gardens
3935 Flush Road
Saint George, KS 66535

10/25/2017

Defendant