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FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS *al*

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 7

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
K SIMON CONSTRUCTION INC.)
and)
ROBERT D. CANNON, JR. an individual)
and)
KELLY J. SIMON, an individual)
both individuals doing business as,)
SURELOCK LEADS)
)
Defendants.)

Case No. 12 C 732

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

JOURNAL ENTRY OF CONSENT JUDGMENT
AS TO DEFENDANT K SIMON CONSTRUCTION INC.

NOW on this 21st day of August, 2013, Plaintiff's 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, Attorney General, appears by and through Meghan E. Stoppel, Assistant Attorney General. Defendant K Simon Construction Inc. (hereinafter "Defendant") appears by and through Alan E. Streit of Larson & Blumreich, Ch.

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 K Simon Construction Inc. ("Defendant K Simon Construction") is incorporated in Texas and Nevada, with locations in Arizona, Colorado, Florida, Georgia, Iowa, Kansas, Louisiana, Missouri, Nebraska, Nevada, New Jersey, New York, Oklahoma, Tennessee, and Texas.

4. Defendant's places of business in Kansas are at 2850 SW Mission Woods Drive, Topeka, Kansas 66614 and 16132 Foster Street, Overland Park, Kansas 66085.

5. Defendant is not registered with the Kansas Secretary of State.

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

7. Defendant stipulates and admits that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

8. Defendant stipulates and admits that venue is proper in this Court.

ALLEGATIONS

9. Defendant acted as a "telephone solicitor" in Kansas, as that term is defined by K.S.A. 50-670(a)(3).

10. Defendant engaged in “consumer telephone calls” in Kansas, as that term is defined by K.S.A. 50-670(a)(1).

11. Defendant contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant’s services.

12. Defendant contacted Kansas consumers by telephone for the purpose of obtaining information to be used in the direct solicitation of a sale of Defendant’s services, *to wit*, by offering to schedule roof inspections to be performed by Defendant.

13. 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. 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; and
- b. 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(b).

14. 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

15. 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.

16. 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.*

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.

18. 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.

19. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, 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.

20. 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. Defendant shall be responsible for their independent contractors' compliance with the terms set forth in paragraph fifteen (15), to the extent Defendant has knowledge said contractors are making consumer telephone calls on Defendant's behalf.

INVESTIGATIVE FEES AND CIVIL PENALTIES

21. Defendant agrees to pay to the Office of the Kansas Attorney General nine thousand dollars (\$9,000.00) in investigative fees and civil penalties for violations of the Kansas No Call Act, pursuant to K.S.A. 50-670(g) and 50-670a(m).

22. Defendant agrees to pay the aforementioned fees and penalties in twelve (12)

installments as follows:

- a. Defendant shall pay \$750.00 to the Office of the Kansas Attorney General at the time of signing this Consent Judgment. The remaining \$8,250.00 shall be paid in eleven (11) equal installments of \$750.00 due on or before the first day of each month thereafter, beginning on August 1, 2013.
 - b. Defendant agrees that time is of the essence for each of the aforementioned payments, and Defendant shall be responsible for the timely submission of each payment.
23. Payment shall be made in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

Meghan E. Stoppel, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave, 2nd Floor
Topeka, Kansas 66612

24. Defendant agrees 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.

OTHER PROVISIONS

25. 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.

26. 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.

27. 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.

28. 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 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.

29. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

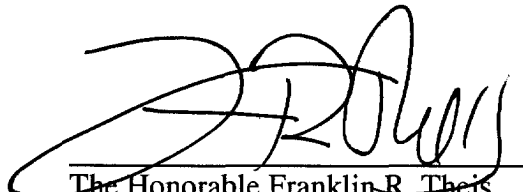
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact

and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$9,000.00.

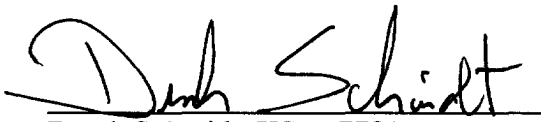
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.


The Honorable Franklin R. Theis
DISTRICT COURT JUDGE

Prepared and approved by:

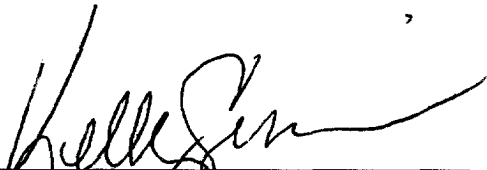
PLAINTIFF:


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Kelly J. Simon, President



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