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KS. DISTRICT COURT
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TOPEKA, KS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 1

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
 Plaintiff,)
)
v.)
)
PRO TURF LAWN SERVICE, INC.)
)
 Defendant.)

Case No. 13C1282

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 8 day of November , 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 Pro Turf Lawn Service, Inc. appears by and through John J. Gates, Esq. of Baty, Holm, Numrich & Otto PC.

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 Pro Turf Lawn Service, Inc. ("Defendant") is a Missouri corporation with a principal place of business at 710 N. Scott, Belton, Missouri 64012.

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

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

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

ALLEGATIONS

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

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

9. Defendant contacted Kansas consumers by telephone for the purpose of soliciting the sale of Defendant's products and services.

10. 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.* and the Telemarketing Sales Rule, 16 C.F.R. § 310 *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;

- 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); and
- c. initiating outbound telephone calls to Kansas consumers when those consumers previously stated they did not wish to receive outbound telephone calls made by or on behalf of Defendant, in violation of 16 C.F.R. 310.4(b)(1)(iii)(A).

11. Pursuant to K.S.A. 50-632(b), this Consent Judgment is not an admission by the Defendant of a violation of the Kansas No Call Act or any other applicable law or regulation as alleged by Plaintiff. Notwithstanding, 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

12. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph ten (10), 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.

13. 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.*

14. 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. § 1601 *et seq.*, and all federal regulations promulgated thereby, including the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*

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

16. 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.

17. 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.

18. Defendant shall require its independent contractors 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 employees, agents, representatives, affiliates, assignees and successors.

INVESTIGATIVE FEES AND CIVIL PENALTIES

20. Defendant agrees to pay to the Office of the Kansas Attorney General ten thousand dollars (\$10,000.00) 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). 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.*, the Telemarketing Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 1601 *et seq.*, and/or the Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, based on Defendant's conduct prior to the date of entry of this Consent Judgment.

21. 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

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 modification of any of the provisions hereof, for the enforcement of compliance herewith, 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 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.

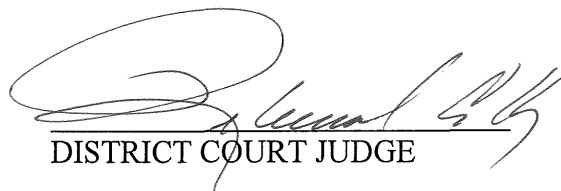
26. Each of the Defendant's representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. 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 \$10,000.00.

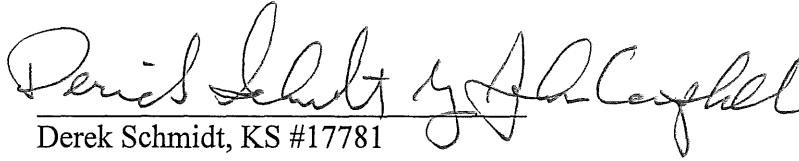
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

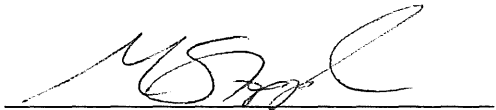

DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

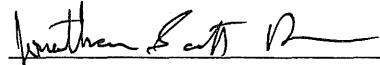


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