

mr

FILED BY CLERK  
KS. DISTRICT COURT  
JUDICIAL DIST.  
TOPEKA, KS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 7

2010 AUG 23 P 1:59

STATE OF KANSAS, *ex rel.* )  
STEVE SIX, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED HEALTH & LIFE CORPORATION )  
 )  
Defendant. )

Case No. 10C1158

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 20<sup>th</sup> day of August, 2010, 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.* Steve Six, Attorney General, appears by and through Meghan E. Barnds, Assistant Attorney General. Defendant appears by and through Timothy Sear of Polsinelli Shughart PC.

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

**PARTIES, JURISDICTION AND VENUE**

1. Steve Six is the 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, specifically the Kansas Consumer Protection Act, ("KCPA") K.S.A. §50-623 *et seq.*
3. Defendant United Health & Life Corporation ("Defendant") is a foreign corporation organized and existing under the laws of Delaware.

4. Defendant has a principal place of business at 2424 Springer Drive, Suite 104 in Norman, Oklahoma 73069.

5. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors, including but not limited to Jason C. Myers.

6. Defendant and Jason C. Myers stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties, including Mr. Myers, pursuant to K.S.A. § 50-623 *et seq.*

7. Defendant and Jason C. Myers stipulate and admit that venue is proper in this Court.

8. Defendant is a “supplier” within the definition of K.S.A. § 50-624(j).

9. Defendant is engaged in consumer transactions in Kansas within the definition of K.S.A. § 50-624(c).

#### **DEFINITIONS**

As used herein, the following terms shall mean:

10. “Advertise,” “Advertisement,” or “Advertising,” shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, leaflet, mailer, letter, catalogue, poster, billboard, point-of-purchase display, electronic mail, website, homepage, film, radio, television, or any other medium.

11. “Clear and Conspicuous” or “Clearly and Conspicuously,” shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and

presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

12. “Consumer,” “Client,” or “Customer” shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A § 50-624.

13. “Defendant” shall mean United Health & Life Corporation, along with its employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors, including but not limited to Jason C. Myers.

14. “Health Care Provider” shall mean any person or entity as contemplated by K.S.A. § 50-1,100(b).

15. “Represent” means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “represent,” including without limitation “representation,” “misrepresent,” and “misrepresentation.”

## ALLEGATIONS

16. Defendant engages in the advertising, solicitation and sale of a discount card that purports to offer discounts or access to discounts in health-related purchases from health care providers in Kansas, as defined by K.S.A. § 50-1,100(a) and K.S.A. § 50-1,101(a).

17. The Plaintiff alleges that Defendant, while offering the aforementioned discount card for sale in Kansas, engaged in acts and practices in violation of the KCPA, which acts and practices include, but are not limited to:

- a. Soliciting discount cards in Kansas without securing a \$50,000.00 surety bond or maintaining an equivalent surety account in the state of Kansas, in violation of K.S.A. § 50-1,101(b)(6);
- b. Soliciting discount cards in Kansas without designating a resident agent, who is a resident of Kansas and registered with the Kansas Secretary of State, in violation of K.S.A. § 50-1,103;
- c. Failing to, within seven days of each transaction with a Kansas consumer, provide a written list of the closest twenty-five (25) health care providers in the consumer's service area that are contractually bound to honor the discount card, in violation of K.S.A. § 50-1,101(b)(4)(B).

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

## INJUNCTIVE RELIEF

19. Defendant and Jason C. Myers, agree to refrain from, and to be permanently enjoined from, engaging in those acts and practices set forth in paragraph seventeen (17) herein, and Defendant and Mr. Myers, agree that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

20. Defendant and Jason C. Myers agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically the Kansas

Consumer Protection Act, K.S.A. § 50-623, *et seq.* and the Kansas Discount Card Act, K.S.A. § 50-1,100 *et seq.*

21. Defendant and Jason C. Myers agree to respond to all consumer complaints in good faith and in a reasonable, timely manner.

22. Defendant and Jason C. Myers agree 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 or this Consent Judgment.

#### **CONSUMER REDRESS**

23. Defendant agrees to terminate the contracts of, and release from further obligation, all Kansas consumers (“Released Consumers”). Defendant agrees to issue appropriate refunds to all Released Consumers for services not yet rendered as of the entry of this Consent Judgment.

24. Within sixty (60) days of the entry of this Consent Judgment, Defendant and Jason C. Myers shall submit a written report to the Office of the Kansas Attorney General confirming the timely completion of the obligations set forth in paragraph twenty-three (23) that includes the name of each Released Consumer, the amount of refund provided by Defendant to each Released Consumer, and the method by which such refunds were delivered to each Released Consumer.

#### **INVESTIGATIVE FEES AND CIVIL PENALTIES**

25. Defendant and Jason C. Myers agree to pay \$5,000.00 to the Office of the Kansas Attorney General, pursuant to K.S.A. § 50-632.

26. 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:

Office of the Kansas Attorney General  
ATTN: Meghan E. Barnds, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

#### **OTHER PROVISIONS**

27. The provisions of this Consent Judgment will be applicable to the Defendant, and every employee, agent or representative of the Defendant, including but not limited to Jason C. Myers.

28. 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.

29. 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.

30. Compliance with this Consent Judgment does not relieve the Defendant or Jason C. Myers 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.

31. 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.

32. 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 Defendant.

**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 \$5,000.00.

**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

*Continued on next page...*


approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

**IT IS SO ORDERED.**

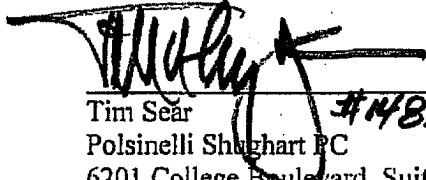
  
DISTRICT COURT JUDGE

Prepared and approved by:

PLAINTIFF:

  
Meghan E. Barnds, #23685  
Assistant Attorney General  
Office of Kansas Attorney General, Steve Six  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751  
*Attorney for Plaintiff*

DEFENDANT:

  
Tim Sear #14813  
Polsinelli Shughart PC  
6201 College Boulevard, Suite 500  
Overland Park, Kansas 66211  
(913) 234-7402  
*Attorney for Defendant*

  
Jason C. Myers, President  
United Health and Life Corporation