

E-03-000030

FILED IN THE DISTRICT COURT  
OF WABAUNSEE COUNTY, KANSAS  
AT 10:32 O'CLOCK    M

JUN 19 2003

Ursena Selva CLERK  
   DEPUTY

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**IN THE DISTRICT COURT OF WABAUNSEE COUNTY, KANSAS**

STATE OF KANSAS, <i>ex rel.</i> ,	)
PHILL KLINE, Attorney General,	)
	)
Plaintiff,	)
	)
v.	)
	)
Gary Gucciano d/b/a,	)
Solstice Arms, Inc., SAI,	)
Solstice Arms Int and Solstice Arms	)
	)
Defendant	)
	)

Case No. 03-C-33<sup>17</sup>

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 18<sup>th</sup> day of June, 2003, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through James R. McCabria, Assistant Attorney General. Defendant Gary Gucciano appears pro se. There are no other appearances.

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

1. Phill Kline is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq*

3. Defendant Gary Gucciano is an individual operating a sole proprietorship under the names "Solstice Arms, Inc.", "SAI", "Solstice Arms Int" and "Solstice Arms" with a principal place of business at RR1, Box 20, Bldg A, Harveyville, Kansas. Defendant Gucciano is a supplier as that term is defined by K.S.A. 50-624(j)(2002 Supp).

4. At all times relevant hereto, and in the ordinary course of business, Defendant Gucciano engaged in consumer transactions as defined by K.S.A. 50-624(c).

5. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.* Defendant is subject to jurisdiction of the court under the Kansas Consumer Protection Act, specifically K.S.A. 50-638(a). Venue is proper in the Second Judicial District of Kansas (Wabaunsee County) under K.S.A. 50-638(b).

6. At all times relevant hereto, Defendant Gucciano solicited consumers to purchase his services through various means, including but not limited to via the internet at [www.solsticearms.com](http://www.solsticearms.com).

7. Prior to filing this action, the Office of the Attorney General received over 65 complaints from consumers located throughout several states reporting conduct that the Attorney General alleges constitutes deceptive and or unconscionable acts in transacting with those consumers.

8. The length of time required to provide services is a material fact for consumers in deciding whether to hire or retain a particular supplier of gunsmithing services. The ability to rely upon statements of a supplier of gunsmithing services as to estimated time to perform those services is a material fact for consumers. The ability to retain control of their own property after the time for

performance of services is a material fact for consumers in deciding whether to rely on the promises of a supplier of gunsmithing services.

9. The Attorney General alleges Defendant violated the Kansas Consumer Protection Act by engaging in the following acts and practices in conjunction with the solicitation and operation of his business:

- a) Defendant Gucciano, in operating his business, uses practices in violation of K.S.A. 50-626(a) and/or 50-626(b)(2) in that he makes willful use of exaggeration, falsehood, innuendo or ambiguity as to his ability to complete services in a timely manner and/or by a date certain, knowing that consumers will rely on such statements in determining whether to contract for Defendant's services.
- b) Defendant Gucciano, in operating his business, uses practices in violation of K.S.A. 50-627(a) in that he makes statements of exaggeration, falsehood, innuendo or ambiguity to consumers that services have been completed or will be completed by a certain date, knowing that consumers will rely on such statements in determining what action to take with regard to their property.
- c) Defendant Gucciano, in operating his business, uses practices in violation of K.S.A. 50-626(a) and/or 50-626(b)(3) in that he willfully conceals, suppresses, omits or fails to disclose to consumers prior to transacting business with them that it is his practice to refuse to return property belonging to consumers when consumers make demand for the return of same after the time has expired for him to render the services, even if he has performed no work or services on the property at the time of the demand.
- d) Defendant Gucciano, in operating his business, uses practices in violation of K.S.A. 50-626(a) and/or 50-626(b)(6) in that he offers services without intent to supply reasonable, expectable public demand for the services and offers such services without disclosing the limitation.
- e) Defendant Gucciano has represented to consumers that he will offer "No Warranty" to those consumers who have complained to Plaintiff's Consumer Protection/Anti-trust Division and such retaliatory limitations constitute unconscionable business practices prohibited by K.S.A. 50-627(a) and/or K.S.A. 50-639.
- f) Defendant Gucciano has represented to certain consumers that, after having the consumers' rifles and/or parts, that if they would send him the cost of shipping for the return of their property, that he would ship the rifle "immediately" or by a certain date, or in some fashion indicated it would be returned upon receipt of the shipping

costs. However, after receiving the funds for shipping, Gucciano failed or refused to honor the promise to return the property to the consumer and each such instance constitutes an unconscionable business practice prohibited by K.S.A. 50-627(a).

10. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law, but specifically denies each act, or that any described act constitutes a violation of law or that any intent to willfully commit any act or practice prohibited by the Kansas Consumer Protection Act existed.

11. Pursuant to the *Ex Parte Order for Sequestration of Assets And Temporary Restraining Order to Seize and Hold Property Belonging to Consumers And Enjoining Defendant from Soliciting Business in Kansas* entered by the Court on May 21, 2003, Defendant has prepared and presented to the Office of the Attorney General a list of all consumer property in his possession or control as of the date the Order was served upon him, said list being attached hereto as Exhibit "A". A material part of this settlement is that Defendant shall diligently update or amend that list in the future if he discovers additional property belonging to consumers that is in his possession or control after the date of this Consent Judgment. Defendant stipulates to the surrender of all property on Exhibit "A", or intended to be on Exhibit "A", and has surrendered all such property to the Office of the Attorney General. Defendant specifically represents to the Court that he has used his best efforts in preparing Exhibit "A" and that the information provided is true and accurate to the best of his abilities after diligent effort.

12. Defendant agrees that in the event any consumer who provides written notification to the the Attorney General within sixty days after being given notice of this Consent Judgment that they sent property or paid money to Defendant for the purpose of rendering services and a) that such property was received by Defendant but Defendant failed to return the property to them or surrender

that property to the Office of the Attorney General, or b) that Defendant provided no material services or benefit to the consumer for such monies as he was paid, that the Attorney General shall have the right, at his option and upon notice of such a hearing to the Defendant, to present that evidence to this Court and allow the Court to render judgment against Defendant for the value of that property or money if the Court concludes such restitution would be justified.

In the event a consumer directs that Defendant be permitted to perform services paid for but not yet rendered, the parties agree that Defendant shall be permitted to perform such services in lieu of any such request for judgment.

13. Defendant Gucciano agrees to entry of judgment as follows:

a) Five-thousand Dollars (\$5,000.00) in civil penalties and investigative fees and expenses to the "Office of the Attorney General" of the State of Kansas for all violations of the Kansas Consumer Protection Act which have been alleged by the Attorney General in it's Petition in this case;

b) Defendant shall be permanently enjoined from any of the practices described in Paragraph 9;

c) Defendant shall be permanently enjoined from seeking, requesting or accepting payment for his services from consumers prior to rendering services;

d) restitution to consumers as may be determined pursuant to Paragraph 12; and

e) if the Attorney General has a basis to bring another action alleging violations of this Consent Judgment or alleging violations of a type and kind similar in nature to those alleged herein that, upon a finding by the Court that such violations have occurred, Defendant agrees to stipulate to civil penalties in the amount of \$10,000.00 per violation and an order permanently enjoining him from doing business within the State of Kansas.

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

15. Nothing in this Consent Judgment shall be interpreted to prevent any consumer from pursuing such remedies at law as are not inconsistent with the provisions hereof.

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, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

17. 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 hereof.

18. 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.

19. 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 her jurisdiction. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against this Defendant in promoting, soliciting or selling his services or any business associated therewith upon belief that such activity is being promoted or operated in a fashion that otherwise violates the law.

20. The parties understand 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.

21. Pursuant to the United States Bankruptcy Code, specifically 11 U.S.C. 523(a)(2)(A) and (a)(7), the judgment herein is not dischargeable.

**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.

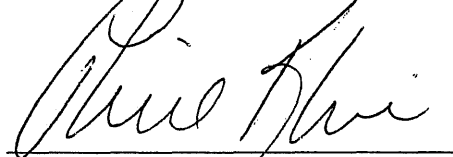
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

**IT IS SO ORDERED.**

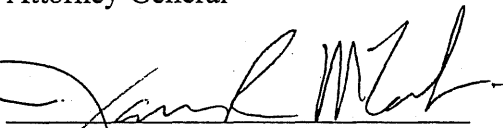
Original signed by  
Gary L. Nafziger

\_\_\_\_\_  
Judge of the District Court

**PREPARED AND APPROVED BY:**

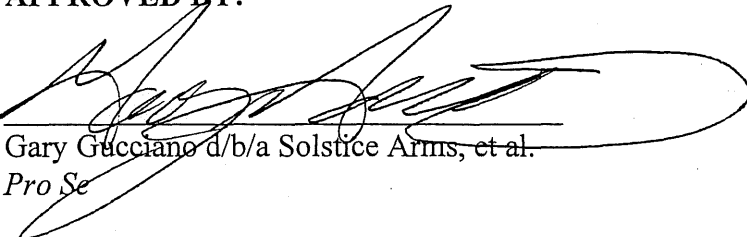


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**APPROVED BY:**



Gary Gucciano d/b/a Solstice Arms, et al.  
*Pro Se*