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GENERAL JURISDICTION
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 3

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General)

Plaintiff,)

vs.)

SUPERIOR FOLIAGE, INC.,)

Defendant.)

Case No. 98CU191

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 10th day of February, 1998, Plaintiff's Petition for Approval of Consent Judgment comes before the Court pursuant to K.S.A. §50-632(b). Plaintiff, the State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Superior Foliage, Inc. appears pro se.

Whereupon, the parties advise the Court that they have stipulated and agree to the following matters:

1. Carla J. Stovall 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, K.S.A. §50-623 *et seq.*

3. Defendant Superior Foliage, Inc. is a foreign corporation organized under the laws of the state of Florida. The principal office of the corporation is located at 17200 SW 248th Street, Homestead, Florida 33031.

4. Pursuant to its Foreign Corporation Application, Defendant Superior Foliage, Inc. may be served with process by serving its registered agent E. H. G. Resident Agents, Inc., 5100 Town Center Circle, Suite #330, Boca Raton, Florida 33486.

5. The officers and shareholders of Superior Foliage, Inc. are Ken A. Lee (Director), Robert E. Lee (Secretary/Director), David Lee (Vice-President/Director), and Valerie Lee (President/Director), all of Miami, Florida.

6. Defendant is a supplier within the definition of K.S.A. §50-624(i) and has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

7. Defendant admits the Court has personal and subject matter jurisdiction over the parties.

8. Defendant stipulates and waives any objection to venue in Shawnee County.

9. Defendant is a plant nursery.

10. On or about May 30, 1996, Defendant shipped 375 potted plants to Joe Corradino, d/b/a Joe's Market, a sole proprietorship and consumer located in Olathe, Kansas, after having received payment in the amount of \$4,029.50 via wire transfer on or about May 22, 1996, from Joe's Market for purchase of the same. These plants were infested with imported fire ants (*Solenopsis Invicta*), which Kansas law requires be either returned to the sender, or destroyed. Upon notification of the same by the Kansas Department of Agriculture, Defendant (through Robert Lee) declined to retrieve the plants; the plants were subsequently destroyed, in accordance with Kansas law. To date, Defendant has not made any type of refund to consumer.

11. The Attorney General alleges that, with regard to the shipment of plants referenced above in paragraph 10 of this Consent Judgment, Defendant engaged in the following

acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendant told consumer that the plants which were the subject of the transaction were in good condition (“very nice, full, bushy”), free from defects; however, the plants were infested with *Solenopsis Invicta* (fire ants), necessitating destruction of the same. This is in violation of K.S.A. §50-626(b)(1)(D), in that it is the representation made knowingly and with reason to know that property is of a particular standard, quality, and grade when it was of another which differs materially from the representation.
- b. Defendant’s representation to consumer that plants were in good condition when they were infested sufficiently so as to require their destruction is a deceptive act, in violation of K.S.A. §50-626(b)(3), in that it is the willful failure to state a material fact, and the willful concealment, suppression and omission of a material fact.
- c. Defendant’s representations to and acceptance of payment from consumer and subsequent shipment of such infested plants is an unconscionable act, in violation of K.S.A. §50-627(b)(1), in that Defendant took advantage of the consumer to reasonably protect the consumer’s interests because of the consumer’s inability to determine plants’ infestation prior to receipt.
- d. Defendant’s representations to and acceptance of payment from consumer and subsequent shipment of such infested plants is an unconscionable act, in violation of K.S.A. §50-627(b)(3), in that, because the degree of infestation of the plants necessitated destruction of them, consumer was unable to receive a material benefit from the subject of the transaction.

12. Defendant, by entering into this Consent Judgment, shall not be deemed to admit and specifically denies the violations of the Kansas Consumer Protection Act alleged herein.

13. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

14. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph eleven (11) of this Consent Judgment, and Defendant agrees that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

15. Defendant agrees to refrain from and to be permanently enjoined from engaging in any and all deceptive and/or unconscionable acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. §50-623 *et seq.*, and Defendant agrees that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

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

18. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

19. 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.

20. Defendant agrees to pay the total sum of \$4,029.50 as restitution to Joe Corradino, d/b/a Joe's Market, a consumer, pursuant to K.S.A. §50-632(a)(3). Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing this Consent Judgment.

21. Defendant agrees to pay \$ 2,500 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$ 2,500 in civil penalties to the "State of Kansas". Payment shall be made by certified checks and shall be delivered to the Attorney General of the State of Kansas at the time of Defendant's signing of this Consent Judgment.

22. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

23. Defendant agrees to maintain all business records for a period of five years and to allow the Attorney General to inspect all of Defendant's business records in the future.

24. 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.

25. 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.

26. 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.

27. 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 Defendant nor shall 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

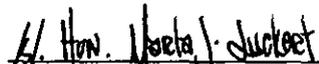
information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

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.

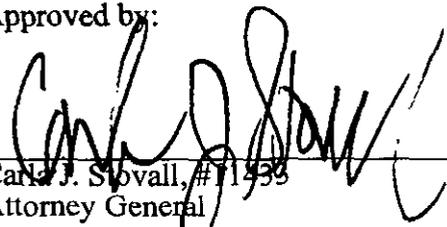
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$ 9,029.50.

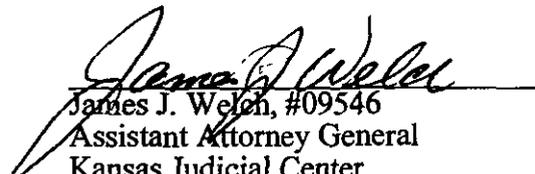
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

Approved by:


Carol J. Stovall, #11439
Attorney General


James J. Welch, #09546
Assistant Attorney General
Kansas Judicial Center
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Valerie Lee

, authorized representative, for
Superior Foliage, Inc.
17200 SW 248th Street
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Defendant

Lisa Bailey

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