

99-004

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FILED BY CLERK  
KS. DISTRICT COURT  
3rd JUDICIAL DISTRICT

JAN 26 3 43 PM '98

TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
Division 11

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

Plaintiff,

vs.

DENNIS L. NELSON,  
D/B/A GREAT AMERICAN STEAK COMPANY,

Defendant.

Case No. 99 C 1A8

Petition Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 11<sup>th</sup> day of JANUARY, 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 Dennis L. Nelson, d/b/a Great American Steak Company, appears by and through Carl F. A. Maughan, McPherson Law Offices, Chtd.

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 Dennis Nelson is the owner and sole proprietor of Great American Steak Company, and is a resident of Oklahoma. Defendant may be served with process at 2812 NW 59th Street #209, Oklahoma City, Oklahoma 73112.

4. Defendant is a supplier within the definition of K.S.A. §50-624(i) and a seller within the definition of K.S.A. §50-901(g), and has engaged in consumer transactions in Kansas within the definition of K.S.A. §50-624(c) and (h).

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

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

7. Defendant is a distributorship which offers for sale and sells meat, poultry, and seafood to consumers.

8. The Attorney General alleges Defendant engaged in the following acts and practices which are deceptive and/or unconscionable and violate the Kansas Consumer Protection Act:

- a. Defendant provided some consumers with brochures which listed meat, chicken, and seafood products available, but did not include prices-per-pound of such products being sold in quantities larger than one pound. A true and correct copy of Defendant's brochure is attached hereto and marked as Exhibit A. Although prices-per-pound are included in Defendant's brochure, Defendant sells product for prices other than those specified in brochure without disclosing the resulting price-per-pound for these differing prices. This is in violation of K.S.A. §50-903(b)(4), in that Defendant represented to consumers prices of products to be offered for

sale in units larger than one pound in terms other than price per single pound.

- b. Defendant's solicitation and sale to consumers of meat products by the box, by the case, or by serving, without disclosing to such consumers the price per pound of such meat products, is in violation of K.S.A. §50-902, in that such representations are misleading and deceiving in respect to price-per-pound.
- c. Defendant failed to furnish consumers with a fully completed receipts which contained in immediate proximity to the space reserved for the consumers' signature a notice of consumers' rights to cancel, in violation of K.S.A. §50-640(b)(1).
- d. Defendant failed to furnish consumers with a completed "Notice of Cancellation" form in duplicate, attached to consumers' receipts which was easily detachable and which contained the consumers' right to cancellation form in 10-point boldface type, in violation of K.S.A. §50-640(b)(2).
- e. Defendant failed, before furnishing copies of the "notice of cancellation" to consumers, to complete both copies by entering the dates of the transactions and the dates, not earlier than the third business days following the dates of the transactions, by which consumers may have given notices of cancellation, in violation of K.S.A. §50-640(b)(3).
- f. Defendant failed to inform consumers orally of such consumers' rights to cancel, at the time such consumers signed the contracts and/or purchased meat from Defendant, in violation of K.S.A. §50-640(b)(5).

9. Defendant voluntarily admits liability and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law. Defendant, by entering into this Consent

Judgment, shall not be deemed to admit the violations of the Kansas Consumer Protection Act alleged herein, or any violation of state or federal law. Defendant has agreed to entry of this Consent Judgment without admitting any wrongdoing and for settlement purposes only.

10. 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 eight (8) 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.

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

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

13. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment by providing refund(s) to the consumer(s) submitting such complaint within 30 days of the date such complaint is forwarded to Defendant for resolution.

14. 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.

15. Defendant agrees to pay \$5,000 in investigation fees and expenses to the "Office of the Attorney General" of the State of Kansas. In addition, Defendant agrees to pay \$5,000 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 this Consent Judgment. Payment of \$500.00 per month shall commence on or before February 1, 1999, with subsequent \$500.00 payments thereafter due on or before the first (1st) day of each month, until the entire amount payable is satisfied. Defendant agrees that failure to make timely

payments, as set out above, will result in the entire outstanding balance becoming due within five (5) days of the first payment missed.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

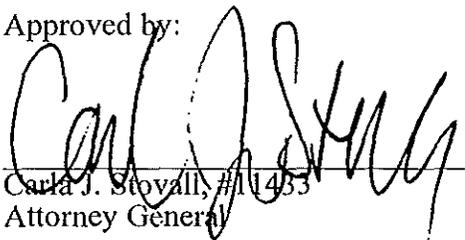
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor Plaintiff in the amount of \$10,000.00.

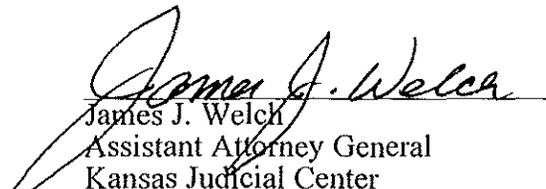
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. §50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

IT IS SO ORDERED.

15/ MATTHEW J. DOWD  
DISTRICT COURT JUDGE

Approved by:

  
Carla J. Stovall, #11433  
Attorney General

  
James J. Welch  
Assistant Attorney General  
Kansas Judicial Center  
Topeka, Kansas 66612-1597  
(785) 296-3751  
Attorney for Plaintiff

*Dennis L. Nelson*

Dennis L. Nelson,  
d/b/a Great American Steak Company  
2812 NW 59th Street #209  
Oklahoma City, Oklahoma 73112  
Defendant

*Carl F. A. Maughan*

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