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GENERAL JURISDICTION
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 1

STATE OF KANSAS, *ex rel.*)
CARLA J. STOVALL, Attorney General,)
)
Plaintiff,)
)
v.)
)
COUNTRY GENERAL, INC.,)
Defendant.)

Case No. 00-C- 873

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 27th day of July, 2000; 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.* Carla J. Stovall, Attorney General, appears by and through counsel, Gail E. Bright, Assistant Attorney General. Defendant, Country General, Inc., appears by and through counsel, Eugene A. Franks, of Culver, Sheridan, Knowlton, Even & Franks, and John D. Dunbar and Michael J. Gorman of Daniels & Kaplan, P.C. There are no other appearances.

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

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. 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.*, and Weights and Measures Standards and Enforcement, K.S.A. 83-201, *et seq.*

3. Defendant Country General, Inc., is a foreign corporation organized under the laws of the State of Delaware with a principal office located at 455 East Ellis Road, Muskegon, Michigan, 49443. Defendant operates numerous retail stores in Kansas.

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

5. Defendant is responsible for the acts of its agents and employees under the legal theory of *respondeat superior*.

6. Defendant stipulates to the personal and subject matter jurisdiction of the Shawnee County District Court over the parties.

7. The Plaintiff alleges Defendant engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:

(a) Great Bend facility [5320 W. 10th Street]

(i) on February 11, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed three (3) errors in signage and/or scanning out of one hundred (100) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

(ii) on March 11, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed three (3) errors in signage and/or scanning out of one hundred (100) items

checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

- (iii) on April 13, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed eight (8) errors in signage and/or scanning out of one hundred (100) items checked, six (6) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (iv) on May 17, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed eight (8) errors in signage and/or scanning out of one hundred (100) items checked, six (6) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (v) on May 17, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store and found an item being offered for sale at the same incorrect price as found in the prior April 13, 1999, inspection, in violation of a stop-sale order, violations of K.S.A. 83-219(a)(25) and K.S.A. 50-626;
- (vi) on June 25, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed seven (7) errors in signage and/or scanning out of one hundred (100) items checked, five (5) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (vii) on August 3, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed four (4) errors in signage and/or scanning out of one hundred (100) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

- (viii) on September 9, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed seven (7) errors in signage and/or scanning out of one hundred (100) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (ix) on October 4, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed three (3) errors in signage and/or scanning out of one hundred (100) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (x) on October 4, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store and found an item being offered for sale at the same incorrect price as found in the prior September 9, 1999, inspection, in violation of a stop-sale order, violations of K.S.A. 83-219(a)(25) and K.S.A. 50-626;
- (xi) on November 4, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed twenty-eight (28) errors in signage and/or scanning out of one hundred (100) items checked, twenty-five (25) of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (xii) on January 24, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store and said investigation revealed twelve (12) errors in signage and/or scanning out of one hundred (100) items checked, eight (8) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626;
- (xiii) on February 14, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an

investigation at Defendant's store with regard to price signage and scanning procedures of said store and said investigation revealed seventeen (17) errors in signage and/or scanning out of one hundred (100) items checked, thirteen (13) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

(xiv) on May 8, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store and said investigation revealed twenty-eight (28) errors in signage and/or scanning out of one hundred (100) items checked, thirteen (13) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626;

(xv) on May 16, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store and said investigation revealed seventeen (17) errors in signage and/or scanning out of one hundred (100) items checked, eight (8) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626; and

(xvi) on May 22, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store and said investigation revealed nineteen (19) errors in signage and/or scanning out of one hundred (100) items checked, thirteen (13) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626.

(b) Norton facility [102 S. 2nd]

(i) on October 6, 1999, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store, said investigation showed four (4) errors in signage and/or scanning out of fifty (50) items checked, all of which would have resulted in overcharges to consumers, violations of K.S.A. 83-219(a)(16) and K.S.A. 50-626; and

- (ii) on April 5, 2000, an employee of the Kansas Department of Agriculture, Division of Weights & Measures, conducted an investigation at Defendant's store with regard to price signage and scanning procedures of said store and said investigation revealed nineteen (19) errors in signage and/or scanning out of fifty (50) items checked, eleven (11) of which would have resulted in overcharges to consumers, in violation of K.S.A. 83-219(a)(16) and K.S.A. 50-626

8. Pursuant to K.S.A. 83-219(d), violations of K.S.A. 83-219 are deemed deceptive acts and practices, as defined by K.S.A. 50-626, under the Kansas Consumer Protection Act.

9. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and without any admission of any kind or nature on the part of the Defendant.

10. Defendant agrees to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph seven (7) in violation of the Kansas Consumer Protection Act. Defendant agrees that engaging in acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

11. Defendant agrees to be bound by this Consent Judgment at all times after the date of entry without regard to whether Defendant acts individually and/or through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated or controlled by Defendant.

12. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to all of its appropriate senior management personnel within thirty (30) days of the date of entry of the Consent Judgment.

13. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures,

or entering into any contract or agreement, for the primary purpose of, or with the result of, avoiding compliance with the terms of this Consent Judgment. Defendant agrees that failure to so refrain, after the date of this Consent Judgment, shall constitute a violation of this Order.

14. Pursuant to K.S.A. 50-623, *et seq.*, and K.S.A. 83-501(g), Defendant agrees to pay Plaintiff the sum of \$20,000.00 in civil penalties, payable to the "Weights & Measures Fee Fund," and \$20,000.00 in investigative fees and expenses to the "Office of the Attorney General." Payment shall be made by cashier's checks and shall be delivered at the time of signing this Consent Judgment.

15. 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.

16. 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.

17. 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. However, upon filing of this Consent Judgment and receipt of the amounts set forth in paragraph fourteen (14) above, the Defendant is released from any and all claims, demands or civil causes of action under the Kansas Consumer Protection Act and Weights and Measures Standards and Enforcement arising

out of any acts and practices engaged in prior to the filing of this Consent Judgment in the nature and/or of the type described in paragraph seven (7) above.

18. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Plaintiffs 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 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.

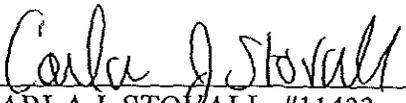
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant in favor of Plaintiff in the amount of \$40,000.00.

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.

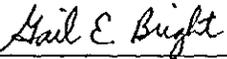
IT IS SO ORDERED.

/s/ Jan W. Leuenberger
Judge of the District Court

PREPARED AND APPROVED BY:



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