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K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Division 6

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

Plaintiff,)

vs.)

Case No. 01C1122

JONATHAN BURKE and CARLTON RAY FOLEY, JR.,)

Defendants.)

Pursuant to K.S.A. Chapter 60

JOURNAL ENTRY OF CONSENT JUDGMENT

COMES NOW the plaintiff, the State of Kansas, on relation of Carla J. Stovall, Attorney General, by and through Assistant Attorney General James J. Welch , and for her cause of action against the defendant, alleges and states:

1. Carla J. Stovall is the duly elected, qualified and acting 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. Defendants Jonathan Burke and Carlton Ray Foley, Jr. are suppliers within the definition of the Kansas Consumer Protection Act, K.S.A. §50-624(i) and have engaged in consumer transactions, as defined by K.S.A. 50-624(c).

4. Defendants Jonathan Burke and Carlton Ray Foley, Jr. are individuals doing business within the state of Kansas. Defendant Carlton Ray Foley, Jr. is a resident of the state of North Carolina, residing at 3625 East Marsh Church Road, St. Pauls, North Carolina 28384, and also uses a mailing address of 2916 St. Johns Drive, Clearwater, Florida 33759.

5. Defendant Jonathan Burke is an individual residing at 2691 St. Johns Drive, Clearwater, Florida 33759.

6. Defendants admit the Court has personal and subject matter jurisdiction over the parties.

7. Defendants stipulate and waive any objection to venue in Shawnee County.

8. Defendants have solicited consumers within the state of Kansas to purchase tennis shoes, totaling purchase prices of \$25 or more in transactions occurring at places other than the Defendants' place of business. In these transactions, Defendants have engaged in acts and practices in violation of the Kansas Consumer Protection Act, as set forth below.

9. Defendants sell shoes to consumers. Defendants' sales constitute door-to-door sales, as defined by K.S.A. §50-640.

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

a. Defendants failed to furnish consumers with 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).

b. Defendants 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).

c. Defendants failed to inform consumers orally of such consumers' rights to cancel, at the time such consumers purchased shoes from Defendants, in violation of K.S.A. §50-640(b)(5).

d. Defendants charged some consumers a monetary amount in excess of the amount collected for product, calling such charge a "sales tax," when, in fact, such amounts collected from consumers in Kansas in past sales have never been remitted to the Kansas Department of Revenue. This is a deceptive act and practice in violation of K.S.A. §50-626.

11. Defendants voluntarily admit liability and agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

12. Defendants agree to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive or unconscionable in paragraph ten (10) of this Consent Judgment, and Defendants agree that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order.

13. Defendants agree 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.*, as it now exists or as amended in the future and Defendants agree that engaging in such acts or practices after the date of this consent judgment shall constitute a violation of this Order.

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

15. Defendants agree to make available and to disclose the provisions of this Consent Judgment to their employees, agents and representatives within five days of signing the Consent Judgment.

16. Defendants agree to resolve any future complaints filed with the Office of the Attorney General regarding Defendants by paying full refunds after the date of this Consent Judgment to satisfaction of the Attorney General within thirty (30) days of the date such complaint is forwarded to Defendants for resolution.

17. Defendants 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 of this Consent Judgment.

18. Defendants agree to pay \$250.00 in civil penalties and \$250.00 in investigative fees, pursuant to K.S.A. §50-632, to "Office of the Attorney General" of the State of Kansas. Payment shall be by cash at the time of signing this Consent Judgment.

19. Defendants agree to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendants do not pay the amounts as agreed herein within the time frame stated.

20. Defendants agree to maintain business records for all transactions conducted in the

state of Kansas for a period of five years from the date of this judgment and to allow the Attorney General to inspect all of Defendants' business records in the future.

21. 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.

22. 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.

23. Compliance with this Consent Judgment does not relieve Defendants 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.

24. 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 Defendants nor shall Defendants 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.

25. The parties agree that Plaintiff possesses \$654.00 in cash and \$166.00 in personal checks pursuant to the September 20, 2001 Order of Sequestration. The parties agree and the Court

hereby approves that the civil penalty and investigative fee of \$500.00 shall be paid from the cash sequestered, and that the remaining cash and personal checks shall be returned to the Defendants. Defendants hereby acknowledge receipt of the remaining cash and personal checks.

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 Defendants in favor Plaintiff in the amount of \$500.

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.

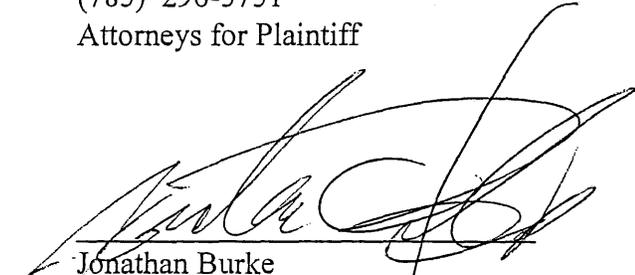

HON. TERRY L. BULLOCK
DISTRICT COURT JUDGE

Approved by:

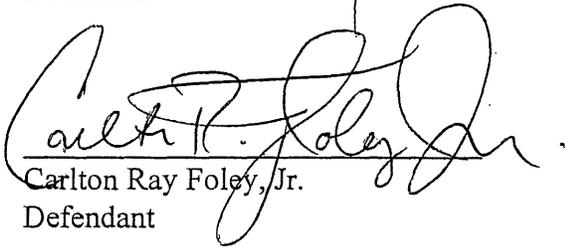

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Jonathan Burke
Defendant



Carlton Ray Foley, Jr.
Defendant