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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2015-CV-001150



Court: Shawnee County District Court
Case Number: 2015-CV-001150
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Christopher Maselka, et al.
Type: Consent Judgment

SO ORDERED.

A handwritten signature in cursive script that reads "Larry D. Hendricks".

/s/ Honorable Larry Hendricks, District Judge

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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6**

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
)
CHRISTOPHER MASELKA, an individual)
and)
IOWA STEAK COMPANY, LLC)
a/k/a)
IOWA STEAK COMPANY)
a/k/a IOWA STEAK)
)
Defendants.)

Case No. 2015-CV-001150

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

CONSENT JUDGMENT

COMES NOW BEFORE THE COURT the parties' agreed Consent Judgment pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Meghan D. Lowry, Assistant Attorney General. Defendants appear by and through Robert S. Caldwell, Caldwell and Moll, LLC.

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

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common laws of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*, and the Kansas Food Advertising Sales Practices Act, K.S.A. 50-901 *et seq.*

3. Defendant Christopher Maselka ("Defendant Maselka") is an individual and the president, owner and operator of Defendant Iowa Steak Company, LLC.

4. Defendant Iowa Steak Company, LLC ("Defendant Iowa Steak") is a limited liability company organized under the laws of the state of Iowa, with a principle place of business at 1441 29th Street, Des Moines, Iowa, 50266.

5. In addition to its principal place of business, Defendant Iowa Steak has office locations in Colorado, Illinois, Michigan, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas and Washington.

6. Defendant Iowa Steak has previously maintained an office location in Kansas City, Missouri at 3604 NE Industrial Drive #209, Kansas City, Missouri 64117.

7. Defendant Iowa Steak currently maintains an office location in Riverside, Missouri at 444 NW Business Park Lane, Riverside, Missouri 64150.

8. All references to Defendants herein include acts performed individually, in concert, or by or through officers, owners, members, managers, agents, employees, representatives, affiliates, assignees and successors.

9. Defendants stipulate and admit that the Court has subject matter jurisdiction over this case and *in personam* jurisdiction over the parties.

10. Defendants stipulate and admit that venue is proper in this Court.

ALLEGATIONS

11. Plaintiff alleges that, at all times relevant hereto, Defendant Maselka operated as

the president and owner of Defendant Iowa Steak.

12. Plaintiff alleges that, at all times relevant hereto, Defendants acted as “suppliers” in Kansas, as that term is defined by K.S.A. 50-624(l).

13. Plaintiff alleges that, at all times relevant hereto, Defendants acted as “sellers” in Kansas, as that term is defined by K.S.A. 50-901(g).

14. Plaintiff alleges that, at all times relevant hereto, Defendants made or caused to be made “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

15. Plaintiff alleges that, at all times relevant hereto, Defendants made or caused to be made “door-to-door sales” in Kansas, as that term is defined by K.S.A. 50-640(c)(1).

16. Plaintiff alleges that, at all times relevant hereto, Defendants made or caused to be made door-to-door sales with Kansas “consumers,” as that term is defined by K.S.A. 50-624(b), and with Kansas “buyers,” as that term is defined by K.S.A. 50-901(a).

17. Plaintiff alleges that, at all times relevant hereto, Defendants, while conducting the aforementioned actions in Kansas, engaged in unconscionable and deceptive acts and practices in violation of the Kansas Consumer Protection Act and the Kansas Food Sales Advertising Practices Act, including violating the requirements for door-to-door sales set out in K.S.A. 50-640, which acts and practices include, but are not limited to:

- a. Failure to furnish the consumer’s written notice of the right to cancel the sale, as set out in K.S.A. 50-640(b)(3); and
- b. Failure to furnish the consumer’s oral notice of the right to cancel the sale, as set out in K.S.A. 50-640(b)(5); and
- c. Negotiating, transferring, selling, or assigning a note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth

business day following the day the contract was signed or the property or services were purchased, in violation of K.S.A. 50-640(b)(8); and

d. Making or causing to be made prices representations of meat products larger than one pound in terms other than price per single pound, in violation of K.S.A. 50-903(b)(4);

e. Making or causing to be made sales of meat products that were described as “packs” that were not itemized to describe each type of cut the buyer would receive, in violation of K.S.A. 50-903(c)(13); and

f. Making or causing to be made price representations that rendered consumers unable to reasonably protect their interests due to their inability to determine the price per pound of the meat that the consumer was purchasing, in violation of K.S.A. 50-627(b)(1); and

g. Committing acts and practices in violation of the terms of the previously executed Consent Judgment between the Office of the Kansas Attorney General and Defendant Maselka, in violation of K.S.A. 50-636(b).

18. Those acts set out in paragraph seventeen (17) are alleged to be unconscionable and deceptive practices and constitute violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626 and K.S.A. 50-627.

19. The parties agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise and settlement of all issues and allegations contained herein for the purpose of avoiding the time, expense, risk and uncertainty associated with litigation.

20. Pursuant to K.S.A. 50-632(b), Defendants are not deemed to admit the alleged violations set forth above.

INJUNCTIVE RELIEF

21. Defendants agree to refrain, and be permanently enjoined, from conducting and making door-to-door sales, as defined in K.S.A. 50-640, in Kansas, and from causing, assisting or permitting such sales to be made.

22. Defendants agree to refrain from, and be permanently enjoined, from engaging in consumer transactions, as defined in K.S.A. 50-624(c), in Kansas, and from causing, assisting or permitting such consumer transactions to be made.

23. Defendants agree to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division against the Defendants or against any agent of Defendants or any independent contractor who violates the Defendants' policy requiring the independent contractors not to sell products in Kansas.

24. 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.

25. Defendants agree to make available and to fully disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative having responsibilities with respect to the subject matter of this Consent Judgment within ten (10) days of signing the Consent Judgment or within fifteen (15) days after any person assumes such position or responsibilities. For purposes of this paragraph, "make available" means providing a copy of this Consent Judgment and requiring each such officer, director, member, manager, employee, agent, independent contractor and representative to confirm that he or she has read and understands the terms of this Consent Judgment.

26. Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors, including but not limited to any independent contractors associated with Defendants.

INVESTIGATIVE AND CIVIL PENALTIES

27. Defendants agree to pay the Office of the Kansas Attorney General fifty thousand dollars (\$25,000.00 civil penalties and \$25,000.00 investigative fees). Payment shall be made as follows:

- a. On February 1, 2018, Defendants shall pay \$10,000.00 to the Office of the Kansas Attorney General, in the form of a cashier's check, money order or other certifiable payable funds.
- b. Thereafter, a payment of \$5,000.00 shall be due in full on the first day of each month thereafter, until payment has been made in full.
- c. Each payment shall be delivered to:

Meghan D. Lowry, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

SUSPENDED CIVIL PENALTY

28. Further, judgment is entered against Defendants, but suspended, in the amount of one hundred thousand dollars (\$100,000.00) for the payment of additional civil penalties for violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-636. This monetary judgment is suspended so long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled "Right to Reopen."

RIGHT TO REOPEN

29. Plaintiff's agreement to Suspend Civil Penalty contained in this Consent Judgment is expressly premised upon Defendants' material compliance with the terms of this Consent Judgment.

30. Defendants' "material compliance" with the terms of this Consent Judgment shall mean material compliance with all the provisions included in Paragraphs 21-26.

31. If, upon motion by the Attorney General to the Court, the Court finds that the Defendants are not in material compliance with the material terms of this Consent Judgment, the suspended monetary judgment is no longer suspended and the amount of \$100,000.00 and shall become due and payable to Plaintiff as ordered by the Court, and the interest rate prescribed under Kansas law shall begin immediately to accrue the unpaid balance.

32. Defendants agree that pursuant to 11 U.S.C. 523(a)(2)(A) and 523(a)(7), and due to the nature of the conduct giving rise to this settlement, any unpaid penalties shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

33. The Parties agree that five (5) years after the date of entry of this Consent Judgment, if the monetary judgment is still suspended, and has not become due and payable to Plaintiff, the suspended monetary judgment will be deemed satisfied, and will no longer be enforceable.

34. Nothing in the foregoing paragraphs shall be construed to limit or restrict any other authorities or remedies provided by law to the Plaintiff.

OTHER PROVISIONS

35. 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.

36. 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.

37. 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 his jurisdiction.

38. 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.

39. Defendants acknowledge that they have been provided notice that K.S.A. 21-6423 may apply.

40. Each of Defendants' representatives signing this Journal Entry of Consent Judgment warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of that Defendant. Defendants further represent that each has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

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. The acts recited herein are declared to be unconscionable and deceptive acts and practices, pursuant to K.S.A. 50-640(b) and, further, to be violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-626 and K.S.A. 50-627.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are permanently enjoined and expressly prohibited from conducting and making door-to-door sales in Kansas, and so long as this order prohibiting door-to-door sales remains in place, if Defendant participates, directly or indirectly, in any door-to-door solicitation or sale in the State of Kansas in violation of this order, Defendant may be subject to K.S.A. 21-6423.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants, jointly and severally, in favor of Plaintiff in the amount of \$50,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered, but suspended, against Defendants, jointly and severally, in favor of Plaintiff in the amount of \$100,000.00.

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.

THIS ORDER IS EFFECTIVE ON THE DATE AND TIME SHOWN BY THE ELECTRONIC FILE STAMP.

Prepared and approved by:

/s/ Derek Schmidt

Derek Schmidt, KS #17781
KANSAS ATTORNEY GENERAL

/s/ Meghan D. Lowry

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Approved By:



Christopher Maselka
Defendant