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CLERK OF THE ALLEN COUNTY DISTRICT COURT
CASE NUMBER: 2017-CV-000033



Court: Allen County District Court
Case Number: 2017-CV-000033
Case Title: State of Kansas ex rel Derek Schmidt, Attorney General vs. Alta Care Corporation, et al.
Type: Consent Judgment as to Def Altacare Corp and Dismissal of Douglas Mittleder

SO ORDERED.

A handwritten signature in dark ink, reading 'Daniel D. Creitz', is written over a light blue rectangular background.

/s/ Honorable Daniel D. Creitz, Chief District Court Judge

Kathryn Carter, #12969
Deputy Attorney General
Office of the Attorney General
Consumer Protection Division
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
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**IN THE DISTRICT COURT OF ALLEN COUNTY, KANSAS
THIRTY-FIRST JUDICIAL DISTRICT**

STATE OF KANSAS, ex rel.	)	
Derek Schmidt, Attorney General,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2017-CV-000033
	)	
AltaCare Corporation	)	
DBA Pine Crest Nursing Home	)	
and	)	
Douglas K. Mittleider, an individual	)	
and	)	
Florida Senior Housing Counsel, Inc.	)	
Defendants.	)	
	)	

CONSENT JUDMENT AS TO DEFENDANT ALTACARE CORPORATION
AND
DISMISSAL OF DOUGLAS K. MITTLEIDER

COME NOW the remaining parties in the present matter and proffer a consent judgment to the Court. Plaintiff State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, appears by and through counsel, Deputy Attorney General Kathryn Carter. Defendants Douglas K. Mittleider and AltaCare Corporation appear by Cynthia J. Sheppard and Samuel R. Feather, Goodell, Stratton, Edmonds and Palmer, LLP.

Being duly advised in the premises, the Court enters the following findings of fact and conclusions of law, as agreed and stipulated by the parties:

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 common law and statutes of the State of Kansas, specifically the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*, K.S.A. 50-7a03, and the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*, which is part of and supplemental to the Kansas Consumer Protection Act.

3. All references to Defendant AltaCare Corporation herein include Defendant's employees, agents, representatives, affiliates, assignees and successors.

4. This Court has personal and subject matter jurisdiction over this controversy through the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a) and venue is proper in Allen County, pursuant to K.S.A. 50-638(b).

5. On October 11, 2017, Plaintiff filed a Petition herein alleging Defendants have breached the requirements of the Wayne Owen Act, deemed unconscionable acts and violations of the Kansas Consumer Protection Act.

6. The parties have reached an agreement to compromise, adjust, settle and release their respective rights and liabilities before the Court without trial or adjudication of any issue of fact or law to avoid the uncertainty, distraction and expense of protracted litigation, on the following terms and conditions.

INJUNCTIVE RELIEF

7. AltaCare Corporation and its officers, agents, employees, and all other persons in

active concert or participation with it, whether acting directly or indirectly, are permanently restrained and enjoined from violating the Kansas Consumer Protection Act, K.S.A 50-623 *et seq.*, and specifically the Wayne Owen Act, K.S.A. 50-6,139 *et seq.*, which specifically requires AltaCare Corporation when engaged in the handling and processing of documents for a nursing home or any endeavor which entails the collection, maintenance and/or possession of records containing the personal information of other persons, to:

- a. implement and maintain reasonable procedures and practices to protect the personal information in their custody from unauthorized access, use, modification or disclosure;
- b. exercise reasonable care to protect the personal information from unauthorized access, use, modification or disclosure; and
- c. take reasonable steps to destroy or arrange for the destruction of any records within Defendant's custody or control containing personal information when Defendant no longer intended to maintain or possess those records.

8. AltaCare Corporation shall withdraw its qualification to conduct business within the State of Kansas within 30 days of execution of this consent judgment and shall be enjoined from conducting business, specifically including consumer transactions, within the State of Kansas for ten years from the effective date of this consent judgment.

9. AltaCare Corporation shall destroy Pinecrest Nursing Center records, specifically including those records held by Plaintiff. Such destruction shall be by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means. In the event AltaCare Corporation fails to destroy those records, Plaintiff shall destroy Pinecrest Nursing Center records in Plaintiff's possession, and

judgment may be modified upon the request of Plaintiff to provide for reimbursement of expenses incurred for destruction and storage of those records, after notice to AltaCare Corporation as set out in paragraph 21.

MONETARY JUDGMENT

10. Judgment is entered against Defendant AltaCare Corporation in favor of Plaintiff in the amount of \$225,000 for enforcement and implementation of consumer protection laws of the State of Kansas that are within the jurisdiction of the Kansas Attorney General and in the amount of \$25,000 for investigative fees and expenses, subject to the terms set out in paragraph 11. A portion of the judgment is suspended, as set out in paragraph 11. The unsuspended balance of the judgment shall be paid in equal quarterly payments over the period of five (5) years, beginning within 90 days of the effective date of the consent judgment.

11. Of the judgment against Defendant AltaCare Corporation, \$125,000 shall be suspended on the specific condition that the financial information provided by Defendants to Plaintiff is true and correct, and on the further condition that Defendants comply with the terms of this consent judgment, specifically including the terms of payment.

12. Payments shall be in the form of a cashier's check, money order or other certified funds payable to the **Office of the Kansas Attorney General**, marked **CP-17-1350** and delivered to:

Office of the Kansas Attorney General
Attn: DAG Kathryn Carter
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

GENERAL PROVISIONS

13. 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.

14. Defendants shall not cause third parties, acting on their behalf, to engage in practices from which Defendants are prohibited by the consent judgment.

15. 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.

16. Compliance with this consent judgment does not relieve Defendants Douglas K. Mittleider and AltaCare Corporation 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.

17. 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.

18. Any failure by any party to this consent judgment to insist upon the strict performance by any other party of any of the provisions of this consent judgment shall not be deemed a waiver of any of the provisions of this consent judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this consent judgment. The consent judgment shall represent the full and complete terms of the settlement entered into by the parties hereto.

19. The parties expressly represent and warrant that they are legally authorized to execute this consent judgment, they have each carefully read the entire contents of this consent judgment, they each understand the contents hereof, and they have each consulted, or had the opportunity to consult with, their own counsel regarding the meaning and effect of each provision hereof.

20. No party shall be deemed the drafter of this consent judgment and, in construing the consent judgment, no provision shall be construed in favor of one party on the ground that such provision was drafted by the other. The parties agree that electronic or facsimile signatures shall be given equal effect as original signatures. This consent judgment may be signed in any number of counterparts, and each counterpart (when combined with all other counterparts) shall represent a fully executed original as if one copy had been signed by all of the parties.

21. Hereafter notice of any action taken hereunder shall be given to the following:

AltaCare Corporation
Suite 190
3050 Royal Blvd, S
Alpharetta, GA 30022

Deputy Attorney General
Consumer Protection Division
Office of Attorney General
120 SW 10th
Topeka, KS 666612
785-296-2215
Ref: CP-17-001350

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the stipulation and agreement of the parties contained herein, are hereby adopted and approved as the orders of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant AltaCare Corporation and in favor of Plaintiff in the amount of \$250,000, subject to the suspension set out in paragraph 11 and that Douglas K. Mittleider is dismissed from the present action.

IT IS SO ORDERED.

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

Respectfully submitted,

PLAINTIFF:

/s/ Derek Schmidt

Derek Schmidt, KS #17781

Attorney General

Office of the Kansas Attorney General

120 SW 10th Ave., 2nd Floor

Topeka, Kansas 66612

(785) 296-2215

/s/ Kathryn Carter

Kathryn Carter, #12969

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Fax: 785-291-3699

Attorney for Plaintiff

DEFENDANTS:



Douglas K. Mittleider, Individually



AltaCare Corporation by
Douglas K. Mittleider,
CEO, CFO, Secretary



Cynthia J. Sheppard, #12039
Samuel Feather, # 25475
Goodell, Stratton, Edmonds & Palmer, L.L.P.
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Pine Crest Nursing Home