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**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS**

STATE OF KANSAS, *ex rel.* )  
STEVE SIX, ATTORNEY GENERAL, )  
 )  
*Plaintiff,* )

v. )

ROBERT BROGDEN'S OLATHE )  
PONTIAC-BUICK-GMC, INC., a )  
Delaware Corporation d/b/a ROBERT )  
BROGDEN AUTO PLAZA, )  
 )  
*Defendant.* )

10 CV 01108

Case No. \_\_\_\_\_  
Div. No. 2  
Chap. \_\_\_\_\_

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 8 day of February, 2010, the above-captioned matter comes before this Court for approval of a stipulated Journal Entry of Consent Judgment pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through counsel, Charles L. Rutter, Assistant Attorney General. Defendant, Robert Brogden's Olathe Pontiac-Buick-GMC, Inc. d/b/a Robert Brogden Auto Plaza, appears by and through counsel, Clyde G. Meise, of the Meise Law Firm, Kansas City, Missouri.

**THEREUPON** the Court, being fully advised in the premises and taking notice of the parties' stipulations, makes the following findings of fact and conclusions of law:

CLERK OF DISTRICT COURT  
JOHNSON COUNTY, KS  
2010 FEB -8 PM 4:18  
NA

SCAN DATE 2010-02-10 11:35

**I. PARTIES TO THIS AGREEMENT**

1. Plaintiff, State of Kansas, ex rel. Steve Six is the duly appointed 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. 50-632(b).
3. Defendant, Robert Brogden's Olathe Pontiac-Buick-GMC, Inc. d/b/a Robert Brogden Auto Plaza (collectively "Defendant" or "RBAP"), is a Delaware corporation conducting business in Kansas, with a principal place of business located at 1500 E. Santa Fe Street, Olathe, Kansas 66061.

**II. JURISDICTION AND VENUE**

4. Defendant RBAP admits that, at all times relevant to the allegations set forth herein and, in the ordinary course of business, it acted as a "supplier" as defined by K.S.A. 50-624(j), by soliciting, advertising, and selling automobiles to Kansas consumers in or around Johnson County, Kansas.
5. RBAP admits that, at all times relevant to the allegations set forth herein and, in the ordinary course of business, it engaged in consumer transactions as defined by K.S.A. 50-624(c), either individually or through her employees, representatives, and agents.
6. RBAP further admits and this Court determines there is personal and subject matter of jurisdiction under K.S.A. 50-623 and K.S.A. 50-638(a).
7. Venue is also proper in the Tenth Judicial District of Kansas (Johnson County), pursuant to K.S.A. 50-638(b).

### III. ALLEGATIONS COMMONS TO ALL CONSUMERS

8. Plaintiff alleges that RBAP committed the following acts or practices in violation of the KCPA.
9. From approximately May through September of 2008, and all periods relevant, RBAP authorized and/or sent approximately 100,000 promotional fliers to Kansas consumers, notifying each recipient they had a "winning number" for a grand prize giveaway when, in fact, they did not.<sup>1</sup>
10. The form and language utilized on the face of RBAP's flier violated various provisions of the KCPA. Specifically, in large, bold-face print, the flier stated: "FINALIST," "GRAND PRIZE GIVEAWAY," "YOU HAVE BEEN CHOSEN AS A FINALIST," "CHECK YOUR NUMBER TO SEE IF IT MATCHES THE WINNING NUMBER!!" This language occurred in close proximity to a large scratch-off box stating: "SCRATCH HERE TO REVEAL NUMBER. . .MATCH THE WINNING NUMBER TO SEE IF YOU'VE WON." The winning number then readily appeared on the opposite side of each flier where a box in bold-face print stated, "WINNING NUMBER," and showed an identical number to the one revealed under the scratch-off box. Consequently, every consumer receiving the flier had what appeared to be a "winning number."
11. However, after reading various mouse print disclaimers on the inside of the flier, consumers could determine such statements were false, in that consumers (except one) did not receive the actual winning number because the winning number was actually printed in a small-sized font directly under the consumer's name and address on the front of the flier. Such practices are alleged to be deceptive and/or

unconscionable pursuant to K.S.A. 50-626(b)(1), (2), and (3), and K.S.A. 50-692(c)(6)(A) and (C).

12. Moreover, it is alleged the inside of the promotional flier contained additional KCPA violations based upon the following representations: "GRAND PRIZE GIVEAWAY for a "New 2008 [GMC]," depicting various 2008 GMC automobiles along with other promotional offers, i.e., (1) "THAT'S RIGHT 75% OFF! ORIGINAL MSRP;" (2) "SAVE THOUSANDS WITH 2.9% APR;" (3) "SAVE \$7000 OFF KELLEY BLUE BOOK;" AND (4) "0% DOWN PAYMENT. . . \$134 PER MONTH. . . AND NO PAYMENT FOR 3 FULL MONTHS!!."
13. Consumers are initially led to believe such promotional offers refer to the primary advertisement containing text and pictures relating to the 2008 GMC vehicles. However, located in the mouse print (i.e., size 6 pt. font or below) at the bottom of the promotional flier, a paragraph containing multiple disclaimers materially altered the implied and/or express meaning of the primary advertisement.<sup>2</sup> Each representation is addressed in turn below.
14. Specifically, the offer stating "0% DOWN PAYMENT. . . \$134 PER MONTH," is materially altered by a mouse print disclaimer at the bottom of the page stating

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<sup>1</sup> An example of a promotional flier is attached as Exhibit A.

<sup>2</sup> The following is a scanned version of RBAP's disclaimer paragraph from the September 2008 flier shown in actual size:

that such offers apply only to a single 1999 Ford Taurus, sticker number of "T4583A. . .[at] a total sale price of \$4,900, for 48 months at 10% with approved credit." Such an offer violates the KCPA as it does not constitute offering a reasonable public demand, nor does it comply with truthful advertising standards that require such disclaimers to be legible and not materially alter the import of the primary claim of the advertisement. Such advertisements are alleged to be deceptive and/or unconscionable pursuant to K.S.A. 50-626(b)(1), (2), and (3), (5), (6) and (7); and, K.S.A. 50-627(b)(1).

15. The next questionable offer stated: "THAT'S RIGHT 75% OFF! ORIGINAL MSRP," however, this offer was also altered by another mouse print disclaimer at the bottom of the page stating it applied only to "1997 Pontiac Grand Prix, sticker number C863A, original MSRP \$26,800 selling price of \$6,600. . .," rather than the 2008 GMC vehicles actually referenced and pictured directly above in large bold-face print. Such a disclaimer materially altered the implied and/or express representation of the primary advertisement, and is alleged to be deceptive and/or unconscionable pursuant to K.S.A. 50-626(b)(1), (2), and (3), (5), (6) and (7); and, K.S.A. 50-627(b)(1).

(1) Zero down plus tax, title, license and dealer processing fees/ \$134 per month, example: 1999 Ford Taurus, sticker #T4583A, Total sale price \$4,900, 48 months at 10% with approved credit. Bonus score 750 or above. Down payment may vary; vehicle payment funded with your current monthly payments must not exceed 50% of your gross monthly income. Must be at least 18 years of age. Any equity deficit in your current vehicle must be paid or refinanced with new vehicle. Bankruptcy must be discharged. Vehicles may have been obtained at auction. (2) 7.75 % off original MSRP. Example: 1997 Pontiac Grand Prix, Sticker #C863A, original MSRP \$26,800 selling price \$6,600 plus tax, title, license, and dealer processing fees. (3) No payment. Until December 2008 subject to lender approval with approved credit. (4) 2.9% Interest Rate. Available for 11/11 only. Available on all New 2008 GMC Sierra's and Yukon's financing available for 60 months through GMAC with approved credit subject to lender approval-see dealer for details. (5) \$7,000 off N.A.D.A. Book Retail available on select vehicles only, example: 2008 Chevrolet Corvette Sticker #T4500A N.A.D.A. retail price \$38,295 selling price \$31,275 plus tax, title, license, and dealer processing fees. \*If the winning number by your address is posted at the dealership you may choose which prize to redeem. Winner has choice of the following prizes: Odds of winning #1 New 2008 Pontiac G5 Sticker #94667, Retail Value \$17,200; #2 '05 LCD Flat Screen TV Model LC 65E997 valued at \$948; #3 40,100 or #3 2008 TRX7000CK ATV. Base MSRP \$7,999; #4 1,40,100; #4 \$1,000 Shopping Spree via QLINE Shopping Spree. Certificate permits you to obtain merchandise with a manufacturer suggested retail price equivalent to the value of the certificate listed above from [www.walgreens.com](http://www.walgreens.com). In connection with your use of the certificate, you will be required to pay shipping handling, and processing fees per item ranging from \$1.95 up to \$29.95 based upon the per item value of the merchandise that you select. You may view the merchandise available for selection and determine the cost for shipping, handling, and processing by visiting [www.walgreens.com](http://www.walgreens.com). Other terms and conditions regarding the use of the certificate are set forth on the website. 40,097 40,100 #5 \$100 Cash; #6 40,100. A winning number will definitely be mailed in combination with other promotional invitations. While supplies last, no purchase necessary, one prize per winner. Must be present to win. Winner must be 18 years or older, have a valid driver's license and social security card and are responsible for all taxes. Contest begins September 16th, 2008 and ends September 20th, 2008. Purchase does not increase chance of winning. Void where prohibited. See complete rules available at Robert Brody Pontiac Buick GMC, Robert Brody Pontiac Buick GMC employees and associates, retail house, AHNO associated sponsors or agencies, and their family members and members of same household are ineligible. Addressee must redeem original prize piece in person by close of business on September 20th, 2008. In the event of print/mechanical errors or duplicate winning numbers distributed in error, then the number match contest is void and no prizes will be awarded. All validly claimed prizes will be awarded. Any unclaimed prizes will not be awarded. Sponsor not responsible for lost, misdirected or damaged mail. All vehicles are for illustration purposes only; all vehicle examples are subject to error also. Pictures may not resemble exact prize models. Void where prohibited by law. All offers end September 20th, 2008.

16. Next, the flier stated: "SAVE THOUSANDS WITH 2.9% APR;" however, the bottom of the page contained a disclaimer that the offer applied only to "new 2008 GMC Sierras and Yukons," with approved credit under certain financing terms. It does not apply to any of the other vehicles referenced or pictured in the advertisement. Such a mouse print disclaimer materially altered the implied and/or express representation of the primary advertisement, and is alleged to be deceptive and/or unconscionable pursuant to K.S.A. 50-626(b)(1), (2), and (3), (5), (6) and (7); and, K.S.A. 50-627(b)(1).
17. The next questionable offer stated: "SAVE \$7000 OFF KELLEY BLUE BOOK;" however, it too contained a disclaimer that its application was limited to a single, "2005 Chevrolet Corvette, sticker number T4500A, N.A.D.A. retail price \$38,275, selling price \$31,275. . . ." The offer did not apply to any of the 2008 GMC vehicles referenced and pictured directly above the offer, nor did it apply to any other used vehicles. Such a mouse print disclaimer materially altered the implied and/or express representations of the primary advertisement, and is alleged to be deceptive and/or unconscionable pursuant to K.S.A. 50-626(b)(1), (2), and (3), (5), (6) and (7); and, K.S.A. 50-627(b)(1).
18. The final offensive provision stated that a "JACKPOT ROLLS OVER EACH DAY UNTIL CLAIMED!!." This representation implied there is a jackpot with an accumulation each day that, if not claimed, would be paid to another participant who comes forward to claim the prize if a winner failed to come forward. This representation promotes event attendance in consumers by making them believe there are additional chances to win through what is a non-existent jackpot.

According to the fine mouse print, there was only one winner who was already identified by number on each flier, and that person could choose only one of the prizes offered, i.e., (1) a "New 2008 Pontiac G5;" (2) a "65-inch Plasma TV;" (3) a "Honda TRX 700 XX" four-wheeler; (4) a "\$1,000 Shopping Spree;" or, (5) "\$100 Cash." In essence, there was no jackpot, nothing to accumulate or "roll-over," even if a winning number failed to come forward. Such an ad is alleged to be deceptive and/or unconscionable pursuant to K.S.A. 50-626(b)(1), (2), and (3), (5), (6) and (7); and, K.S.A. 50-627(b)(1).

19. Finally, smaller "gifts" or prize giveaways, i.e., "MP3 Players," amounted to *per se* violations of K.S.A. 50-692, in that they failed to provide consumers with proper notice of a "verifiable retail value" for the prize listed, and the costs of shipping and handling and other limitations for claiming the prize were not printed in size or type of font required by the statute, nor were they printed in "immediate proximity" to the prize listed.

#### **IV. AGREED REMEDIES**

20. Defendant agrees to entry of judgment against it in the amount of \$25,000, and agrees to pay said amount at the time of the filing of this Consent Judgment or as follows:
21. Pursuant to K.S.A. 50-636(a), Defendant shall pay civil penalties in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00), in the form of a cashier's check, directly to the Office of the Kansas Attorney General. Said funds shall be distributed to the State General Fund in accordance with K.S.A. 50-636(c). Installments may be made at the election of Defendant by paying six monthly

payments, commencing on the date of the filing of this consent judgment (but not later than February 1, 2010), and continuing each month until paid in full according to the following payment schedule:

- (1) On or before February 1, 2010. . . . . \$2,083.33
- (2) On or before March 1, 2010. . . . . \$2,083.33
- (3) On or before April 1, 2010. . . . . \$2,083.33
- (4) On or before May 1, 2010. . . . . \$2,083.33
- (5) On or before June 1, 2010. . . . . \$2,083.33
- (6) On or before July 1, 2010. . . . . \$2,083.35

22. Pursuant to K.S.A. 50-636(a), Defendant shall pay reasonable investigative fees and expenses in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00), in the form of a cashier's check, directly to the Office of the Kansas Attorney General. Said funds shall be utilized at the discretion of the Attorney General. Installments may be made at the election of Defendant by paying six monthly payments, commencing on the date of the filing of this consent judgment (but not later than February 1, 2010), and continuing each month until paid in full according to the following payment schedule:

- (1) On or before February 1, 2010. . . . . \$2,083.33
- (2) On or before March 1, 2010. . . . . \$2,083.33
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- (4) On or before May 1, 2010. . . . . \$2,083.33
- (5) On or before June 1, 2010. . . . . \$2,083.33
- (6) On or before July 1, 2010. . . . . \$2,083.35

23. The parties acknowledge that a separate letter agreement containing a personal guaranty from one of Defendant's corporate officers has been executed between the parties, and is intended to secure payment of this judgment until such time as the judgment has been paid in full or default occurs.
24. Upon payment in full of this judgment by either the Defendant or the Guarantor (in the case of default), the Attorney General shall file with the court a satisfaction of judgment and provide parties with a file-stamped copy.
25. Defendant agrees to be permanently enjoined from committing the acts or practices set forth herein in any ongoing or future consumer transactions in this State. Defendant further agrees that its agents, employees, and representatives are also permanently enjoined from committing the acts or practices described above in any ongoing or future consumer transactions in this State.
26. 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 his jurisdiction.
27. The parties understand this Consent Judgment shall not be construed as an approval or sanction by the Kansas Attorney General of the business practices of Defendant, nor shall Defendant represent the decree of such 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

28. Nothing in this Consent Judgment shall be construed to limit the rights of any consumers from pursuing any and all legal remedies they may be entitled to assert individually through a private cause of action.
29. Defendant acknowledges and agrees this Court has continuing jurisdiction over this matter pursuant to K.S.A. 50-632(b) and, any breach any of the terms, conditions, or payment plans set forth herein, shall be treated as a violation of the Court's order and shall be subject to further penalties under the law.
30. This Court shall also retain such jurisdiction 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 relief as may be necessary or appropriate for the modification or compliance of any provisions contained herein. This Court shall also retain jurisdiction if any violation of any term of this Consent Judgment is committed.
31. Defendant further acknowledges and agrees that, pursuant to the United States Bankruptcy code, specifically 11 U.S.C 523(a)(2)(A) and (a)(7), and due to the nature of the conduct underlying this agreement and the violations set forth herein, this judgment shall not be dischargeable in any federal court bankruptcy proceeding commenced after the entry of this judgment.
32. 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.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the stipulations and agreements of the parties contained herein are found to be reasonable and

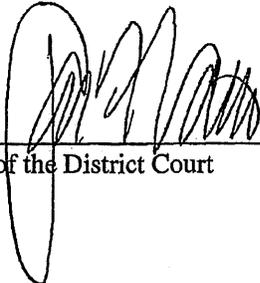
are hereby adopted and approved as the findings of fact and conclusions of law of the Court.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered against Defendant Robert Brogden's Olathe Pontiac-Buick-GMC, Inc. d/b/a Robert Brogden Auto Plaza, in favor of Plaintiff in the amounts set forth herein.

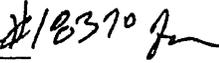
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of rendering any additional equitable relief, orders, decrees, or judgments as may be requested by the parties or may be deemed appropriate by the Court.

**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**

  
\_\_\_\_\_  
Judge of the District Court

Respectfully submitted and approved by:  
STEVE SIX, Attorney General,

By:  #18370 

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AND

By:  President  
Authorized Agent or Officer of Defendant  
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