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CLERK OF THE DIST. COURT
OSAGE COUNTY KANSAS

IN THE DISTRICT COURT OF OSAGE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*)
STEVE SIX, ATTORNEY GENERAL,)
)
Plaintiff,)
)
)
v.)
)
OSAGE CHEVROLET BUICK, INC.,)
)
Defendant.)
_____)

Case No. 10CV119

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this _____ day of September, 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, Emilie Burdette, Assistant Attorney General. Defendant, Osage Chevrolet Buick, Inc., appears by and through counsel, Stanley R. Ausemus.

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:

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, Osage Chevrolet Buick, Inc. (hereinafter collectively "Defendant"), is a Kansas corporation conducting business in Kansas, with a principal place of business located at 425 Market Street in Osage City, Kansas. Defendant currently operates under the name Branine Chevrolet-Buick, Inc.
4. All references to Defendant herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.
5. At all times relevant to the allegations set forth herein and, in the ordinary course of business, Defendant 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 Osage County, Kansas.
6. At all times relevant to the allegations set forth herein and, in the ordinary course of business, Defendant engaged in consumer transactions as defined by K.S.A. 50-624(c), either individually or through employees, representatives, or agents.
7. The Court has personal and subject matter jurisdiction pursuant to the Kansas Consumer Protection act, K.S.A. 50-623 and K.S.A. 50-638(a).
8. Venue is proper in the 4th Judicial District of Kansas (Osage County), pursuant to K.S.A. 50-638(b).
9. Plaintiff alleges that in August of 2008, Defendant sent or caused to be sent 20,000 promotional fliers with a scratch off card and key soliciting Kansas

consumers to attend a sales event. Defendant contracted with Rush Hour Events, a third-party entity, to develop and assist in all aspects of said sales event.

10. Plaintiff alleges Defendant engaged in deceptive acts or practices in violation of the Kansas Consumer Protection Act arising from and related to that sales flier. Specifically, Plaintiff alleges and Defendant denies the following:
 - a. Defendant misrepresented the incentives offered consumers induced by the flier to attend Defendant's sales event, a deceptive act in violation of K.S.A. 50-626(a).
 - b. Defendant failed to disclose material facts about the availability, applicability and associated costs of a represented "free gas" prize, deceptive acts in violation of K.S.A. 50-626(a).
11. Defendant voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and denies all allegations contained herein.
12. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive and/or unconscionable in paragraph ten (10) above. 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.
13. Defendant agrees that engaging in such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order and civil penalties will be imposed for each subsequent violation.

14. Defendant agrees to entry of judgment in the amount of \$5,000.00 and agrees to pay said amount at the time of the filing of this Consent Judgment directly to the Office of the Kansas Attorney General.
15. Defendant agrees to be permanently enjoined from conducting business or entering into any contractual agreements, relationships or arrangements with Rush Hour Events for any services, including but not limited to marketing and promotion of vehicle sales events.
16. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state, or local criminal laws, nor shall the Attorney General be precluded from taking appropriate legal action to enforce criminal statutes under his jurisdiction. This Consent Judgment is intended to be a complete release of any and all civil claims which the Kansas Attorney General has under its jurisdiction relating to the incident herein described that could be brought under the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*
17. 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.

18. 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.
19. 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.
20. 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.
21. 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.
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.

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 Osage Chevrolet Buick, Inc. 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

ERIC W. GODDERZ

Judge of the District Court

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

By:  _____

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