

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**STATE OF KANSAS, ex rel.
STEVE SIX, Attorney General,**

Plaintiff,

v.

**CFS ENTERPRISES, INC.
d/b/a CHAD FRANKLIN SUZUKI a/k/a
LEGENDS SUZUKI,**

Defendant.

Case No. 2:08-CV-2412-CM/JPO

STIPULATION FOR JUDGMENT

NOW on this 8th day of July, 2009, Plaintiff, the State of Kansas, *ex rel.* Steve Six, Attorney General, appears by and through Tai J. Vokins, Assistant Attorney General. Defendant CFS Enterprises, Inc. d/b/a Chad Franklin Suzuki a/ka/ Legends Suzuki (hereinafter “Defendant CFS Enterprises, Inc.”) appears by and through Kevin D. Case, Case & Roberts, P.C.

The parties advise the Court that they have agreed to and stipulate to the following:

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332.
2. This Court has personal jurisdiction over the parties.
3. Steve Six is the duly appointed and acting Attorney General of the State of Kansas.
4. 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).
5. Before it ceased doing business in 2009, Defendant CFS Enterprises, Inc. had a principal place of business at 6801 State Avenue in Kansas City, Kansas.

6. All times relevant, Defendant CFS Enterprises, Inc. was a business entity organized under the laws of the State of Kansas and registered with the Kansas Secretary of State.

7. Defendant CFS Enterprises, Inc. was a business entity engaged in the advertising, solicitation and sale of motor vehicles, both new and used, to consumers.

8. At all times relevant, Defendant has acted as a “supplier” as defined by K.S.A. 50-624(j) and engaged in “consumer transactions” as defined by K.S.A. 50-624(c).

9. At all times relevant, Defendant CFS Enterprises, Inc. was a franchisee of American Suzuki Motor Corporation (“American Suzuki”).

10. At all times relevant, and in the ordinary course business, American Suzuki distributed new motor vehicles to Defendant CFS Enterprises, Inc. pursuant to a franchise agreement between them.

11. In June of 2007, Defendant CFS Enterprises, Inc. began running numerous television and radio promotional advertisements in the Greater Kansas City media market.

12. In general, these radio and television spots advertised various “Drive a Suzuki” promotions.

13. These advertisements aired on both television and radio stations in the Greater Kansas City media market. The various advertisements were aired approximately 9,484 times during this period. Approximately \$1.09 million was spent on these advertisements, paid for in substantial part by American Suzuki.

14. These advertisements were developed by The Christopher Ad Group located in Coral Gables, Florida.

15. Many of the advertisements and promotions involved new Suzuki vehicles distributed by American Suzuki. Based in part on these advertisements, consumers visited Defendant CFS Enterprises, Inc.'s dealership location to inquire about the programs.

16. Over 600 consumers entered into transactions with Defendant CFS Enterprises, Inc. for the purchase of new Suzuki vehicles during the period during which the advertising promotions aired.

17. Many consumers were issued rebate checks from Defendant CFS Enterprises, Inc. as part of the promotions. These checks were to be used to off-set the monthly payments to comply with the advertised payment terms. In some transactions, the consumer was advised that when those rebate funds were exhausted, the vehicle could be brought back to the dealership where another new Suzuki would be made available and another round of checks would be issued payable to the consumer from Defendant CFS Enterprises, Inc.

18. During the initial sales transactions, some consumers allege they were not allowed to negotiate or bargain for the interest rate or payment amount. These consumers also allege they were required to purchase gap insurance and extended warranty policies.

19. When consumers returned to Defendant CFS Enterprises, Inc.'s dealership at the times specified pursuant to the promotions, the consumers were, in some instances, advised that the advertising promotions had ended. The consumers were then required to make additional payments on the vehicles or face potential recourse by the lending institutions who purchased the consumers' retail installment contracts.

20. Plaintiff alleges that Defendant CFS Enterprises, Inc. engaged in unconscionable and deceptive acts or practices in violation of the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.* Specifically, Plaintiff alleges the following:

(a) Defendant aired or caused to be aired advertisements that did not comply with the Truth in Lending Act and Regulation Z, specifically that these advertisements did not make the statutorily-required disclosures for closed-end credit mandated by 15 USC 1601. Each airing of a non-conforming advertisement is a distinct and separate unconscionable act in violation of K.S.A. 50-627.

(b) Defendant aired or caused to be aired advertisements that concealed, omitted or misrepresented a material fact of the advertised promotion, specifically that the promotion would last for a duration of time, when in truth, the terms of the promotion would end before that specified duration. Each airing of said advertisement is a distinct and separate deceptive act in violation of K.S.A. 50-626.

(c) Defendant aired or caused to be aired advertisements that concealed, omitted or misrepresented a material fact of the advertised promotion, specifically that the promotion would result in consumers being required to make full payments on their vehicles. Each airing of said advertisement is a distinct and separate deceptive act in violation of K.S.A. 50-626.

(d) Defendant induced consumers to enter into transactions that were excessively one-sided in favor of Defendant CFS Enterprises, Inc., specifically that Defendant did not allow consumers to negotiate the interest rate, price, gap insurance coverage or extended warranty coverage terms in the contracts signed, all unconscionable acts in violation of K.S.A. 50-627(b)(5).

(e) Defendant induced some consumers to enter into transactions in which there was no reasonable probability that those consumers would be able to fully pay for the obligation because of the financial limitations of those consumers. Defendant was aware of the limitations through financial disclosures utilized in obtaining financing of the vehicles for these consumers. Each of these transactions is an unconscionable act in violation of K.S.A. 50-627(b)(4).

(f) Defendant took advantage of the inability of consumers to reasonably protect their interests because of the consumers' ignorance of the false representations made through advertisements and statements, all unconscionable acts in violation of K.S.A. 50-627(b)(1).

(g) Defendant made or caused to be made misleading statements of opinion about the nature of the advertising promotion, the success of the advertising promotion,

and reasons advocating for consumers to participate in the promotion, all unconscionable acts in violation of K.S.A. 50-627(b)(6).

(h) Defendant engaged in unconscionable acts by failing to give advance notice to consumers about the abrupt end of the promotions, failing to give consumers the opportunity to avoid the un-bargained for contract terms, and failing to notify the lending institutions that financed these transactions of the substantial change in condition, all unconscionable acts in violation of K.S.A. 50-627.

(i) Defendant willfully made or caused to be made misrepresentations of material fact to consumers at the time of contract formation, specifically regarding the reasons for the promotion, the duration of the promotion, the terms of the promotion, and that consumers would be responsible for any deficiency incurred on the vehicles purchased, all deceptive acts in violation of K.S.A. 50-626(b)(2).

21. Defendant CFS Enterprises, Inc. stipulates to this Judgment without trial or adjudication of any issue of fact or law and without admitting any allegation contained in the petition filed by the Plaintiff except that this court has jurisdiction over it and the subject matter and that the Attorney General has the authority to bring this action.

22. Defendant CFS Enterprises, Inc. agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be unlawful and unconscionable in paragraph 20 of this Judgment.

23. Defendant CFS Enterprises, Inc. agrees that engaging in such acts or similar acts, after the date of this Stipulation for Judgment, shall constitute a violation of this Stipulation for Judgment and the Court's Judgment, and civil penalties can be imposed for each subsequent violation.

24. The parties stipulate and agree that judgment shall be entered pursuant to F.R.Civ.P. 54, in favor of the Plaintiff and against the Defendant on Count II of the Petition in the amount of \$350,000.00 as restitution, costs and expenses. Plaintiff shall distribute restitution to consumers listed in Exhibit A as determined by the Plaintiff.

25. The parties further stipulate and agree that Defendant CFS Enterprises, Inc. will, as of the date of this Stipulation for Judgment, cease all business operations in Kansas and be permanently enjoined from doing any business in Kansas, including but not limited to, the sale of new and/or used vehicles to “consumers” as that term is defined in K.S.A. 50-624.

26. Defendant CFS Enterprises, Inc. and its owners, operators and principals agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure(s), for the purpose of avoiding compliance with the terms of the court’s Judgment.

27. The parties further stipulate and agree that the remaining claims asserted by the plaintiff shall be dismissed with prejudice to their refiling.

28. This Court case shall be closed, except that this Court shall retain jurisdiction for the purpose of enforcing this Consent Judgment.

29. The parties further stipulate and agree that the Court’s Judgment does not relieve Defendant of any obligation imposed by any other applicable federal, state or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce other civil or criminal statutes under his jurisdiction.

30. The parties understand that this Judgment shall not be construed as an approval or sanction by the Kansas Attorney General of the business practices of Defendant. 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 Stipulated 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.

Prepared and approved by:

**OFFICE OF THE ATTORNEY GENERAL
STEVE SIX**

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