

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
Division 14

STATE OF KANSAS, *ex rel.*,)
 DEREK SCHMIDT, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 CHARLES H. MOORE, individually)
 d/b/a)
 4-AUTO PARTS.COM)
)
 and)
)
 4 AUTO PARTS, LLC)
 Defendants.)

Case No. 09 CV 10695

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 22nd day of Feb, 2011, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Meghan E. Stoppel, Assistant Attorney General. Defendant CHARLES H. MOORE, individually and Defendant 4 AUTO PARTS, LLC appear through Bruce D. Mayfield, Esq.

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

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the Attorney General of the State of Kansas.

orig.

CLERK OF DISTRICT COURT
 JOHNSON COUNTY, KS.
 2011 FEB 23 PM 1:22

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SCAN DATE 2011/02/28 14:59

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, ("KCPA") K.S.A. 50-623 *et seq.*

3. Defendant 4 AUTO PARTS LLC is a limited liability company, organized and existing under the laws of Kansas.

4. Defendant CHARLES H. MOORE is the sole member and operator of 4 AUTO PARTS, LLC.

5. Defendants have a principal place of business at 9012 West 106th Street in Overland Park, Kansas 66212.

6. Defendants are suppliers within the definition of K.S.A. 50-624(j).

7. Defendants are engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c).

DEFINITIONS

As used herein, the following terms shall mean:

8. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, leaflet, mailer, letter, catalogue, poster, billboard, point-of-purchase display, electronic mail, website, internet posting, homepage, film, radio, television, or any other medium.

9. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A clear and conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be present in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

10. "Consumer," "Client," or "Customer" shall mean any individual, husband and wife, sole proprietor, or family partnership who seeks or acquires property or services for personal, family, household, business or agricultural purposes, as defined in K.S.A 50-624.

11. "Defendants" shall mean CHARLES H. MOORE, individually and, 4 AUTO PARTS, LLC and their employees, directors, officers, owners, members, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

12. "Represent" means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word "represent," including without limitation "representation," "misrepresent," and "misrepresentation."

ALLEGATIONS

13. Defendants are engaged in the advertising, solicitation and sale of automotive parts.

14. Defendants utilize the website www.4-autoparts.com to sell the aforementioned automotive parts.

15. Plaintiff alleges that Defendants, while offering automotive parts for sale, engaged in deceptive and unconscionable acts and practices in violation of the KCPA, specifically, but not limited to, K.S.A. 50-626 and 50-627.

16. Defendants do not admit the above allegations and in fact deny all such allegations.

17. The parties agree to this Consent Judgment without trial or adjudication of any issue of fact or law solely for the purposes of settlement.

INJUNCTIVE RELIEF

18. Defendants agree to clearly and conspicuously disclose in their advertisements all material terms related to Defendants' products and services, including but not limited to all information related to Defendants' refund and exchange policies.

19. Defendants agree to clearly and conspicuously disclose all terms and conditions which limit a consumer's ability to obtain a refund in exchange for return of Defendants products or services, in all advertisements or other communications with a consumer made prior to the consumer's agreement to purchase Defendants' products or services. The relevant disclaimer(s) shall be placed on the same page as the remainder of the advertisement, located in close proximity to all other material terms and conditions, and set in type no smaller

than the size font/character type as that used in the remainder of the advertisement. If disseminated audibly via television, telephone, or radio broadcast, said disclaimer(s) shall be conveyed at the same decibel level as the main body of the remaining message.

20. Defendants agree to promptly honor all reasonable consumer requests for replacement products if in conformance with terms and conditions agreed to by the parties and, in the event that a replacement product is unavailable or cannot be delivered to the consumer in a timely manner, to issue appropriate refunds to such consumers. This term shall permanently apply to Defendants, in accordance with paragraph thirty-five (35) of this Consent Judgment.

21. Defendants agree to refrain, and to be permanently enjoined, from billing or charging consumers for products that Defendants fail to deliver.

22. Defendants agree to refrain, and to be permanently enjoined, from misrepresenting, directly or indirectly, in their advertising, promotional materials, sales presentations, or in any manner, the nature of the product(s) to be delivered to consumers.

23. Defendants agree to refrain, and to be permanently enjoined, from misrepresenting consumers' rights, remedies or obligations with regard to consumers' transactions with Defendants, including but not limited to, the consumer's ability to avail him- or herself of any dispute resolution process offered by the consumer's credit card company.

24. Defendants agree to clearly and conspicuously disclaim that Defendants' products may be delivered from a third party, and that consumers should make return of Defendants' products directly to Defendants and not to any third party. This term shall permanently apply to Defendants, in accordance with paragraph thirty-five (35) of this Consent Judgment.

25. Defendants agree to refrain, and to be permanently enjoined, from making representations that, directly or indirectly, contradict terms or language contained in Defendants' terms and conditions, order confirmations or written contracts with consumers.

26. With respect to all sales actually performed in the state of Kansas, Defendants agree to comply with all Kansas laws, statutes, rules and regulations, relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*

27. If the Attorney General determines that a Defendant has failed to comply with any of the terms of this Consent, and if, in the Attorney General's sole discretion, the failure to comply does not threaten the health or safety of any consumer and/or does not create an emergency requiring immediate action, the Attorney General will notify the Defendant in writing, obtaining proof of delivery, of such failure to comply. Defendant shall then have fifteen (15) business days from actual receipt of such written notice to provide a good faith written response to the Office of the Kansas Attorney General. The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Defendant believes it is in full compliance with this Consent Judgment;
- b. A detailed explanation of how the alleged violation(s) occurred;
- c. A statement that the alleged breach has been cured and how; or
- d. A statement that the alleged breach cannot be reasonably cured within fifteen (15) business days from receipt of the notice, but
 - i. Defendant has begun to take corrective action to cure the alleged breach;

- ii. Defendant is pursuing such corrective action with reasonable and due diligence; and
- iii. Defendant has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

Nothing herein shall prevent the Attorney General from agreeing in writing to provide Defendant with additional time beyond the fifteen (15) business day period to respond to the notice.

28. Defendants agree to respond to all other consumer complaints, including those filed with the Better Business Bureau or any other state Attorney General, in good faith and in a reasonable, timely manner.

29. Defendants agree to record, beginning February 15, 2011, each formal written complaint received from the Better Business Bureau or any other state Attorney General, consumer arbitration demand, and lawsuit filed by any consumer. Upon request by the Attorney General for good cause shown, Defendants shall provide a current, full and accurate list of the foregoing to the Attorney General that includes: name of complainant; address of complainant; nature of complaint, if any; date of complaint; date of resolution, if any. This term shall permanently apply to Defendants, in accordance with paragraph thirty-five (35) of this Consent Judgment.

30. 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. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager 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.

MONETARY JUDGMENT

31. Upon a finding by this Court that Defendants knowingly violated any term of this Consent Judgment, Defendants shall be liable, jointly and severally, for the payment of consumer restitution and investigative fees and costs incurred by Plaintiff up until the date of entry of this Consent Judgment, in the amount of twelve thousand, five hundred dollars (\$12,500.00).

32. Paragraph thirty (30) shall not be interpreted to limit in any way the authority of the Attorney General to pursue a contempt action against Defendants for a violation of this Judgment, nor shall it be construed to limit the Court's authority to issue additional penalties in the event the Court finds the Defendants violated a term of this Judgment.

OTHER PROVISIONS

33. The provisions of this Consent Judgment will be applicable to the Defendants.

34. Jurisdiction is retained by the District Court of Johnson County, Kansas, and the Defendants consent to personal and subject matter jurisdiction in the District Court of Johnson County, for the purpose of enabling any of the parties to this Consent Judgment to apply to the 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.

35. The term "permanent" or "permanently" as used everywhere in this Consent Judgment shall be defined as three years from the date the Consent is filed but may, upon

application of the Plaintiff prior to its expiration and approval of the Court after hearing, be extended for an additional three years for good cause shown arising solely from facts occurring since this Consent Judgment is filed.

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 the 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 the Defendants nor shall the 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. All notices, requests, demands or other communications required by this Assurance or given pursuant to its terms must be in writing. For any such communication to be considered delivered, it must be delivered by hand, received ("refusal" shall be considered as

received) after being mailed by registered or certified mail, postage prepaid or a nationally recognized overnight courier to:

Office of the Kansas Attorney General
Consumer Protection Division
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597

or

Charles H. Moore
9012 W. 106th Street
Overland Park, Kansas 66212

Delivery upon Defendant 4 Auto Parts, LLC shall be made at the address of the Current Registered Agent on file with the Kansas Secretary State.

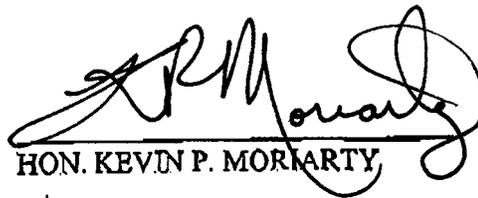
40. Each of the Defendants' representatives, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant. Defendants further represent that they have 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 upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay all costs associated with this action which at the present time includes only the filing fee.

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.

IN WITNESS WHEREOF, the undersigned have caused this Consent Judgment to be executed in their respective names this 22nd day of Feb, 2011.


HON. KEVIN P. MORIARTY

STATE OF KANSAS:

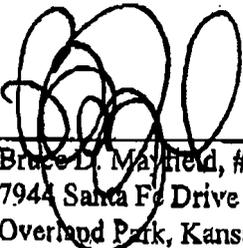

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DEFENDANTS:


Charles H. Moore



4 Auto Parts, LLC
Charles H. Moore, President



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(913) 649-8404
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