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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

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**IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT, SHAWNEE COUNTY, KANSAS
CIVIL DEPARTMENT**

THE STATE OF KANSAS, *ex rel*)
DEREK SCHMIDT, Attorney General)
and)
MARC BENNETT, District Attorney)
Eighteenth Judicial District)
and)
STEPHEN M. HOWE, District Attorney)
Tenth Judicial District)
Plaintiffs,)

v.)

CREDIT ACCEPTANCE CORPORATION,)
a Michigan Corporation)
Defendant,)

2016-CV-636
Case No. ___ CV ___
Div 6

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW, on this fifteenth day of August, 2016, the above matter comes on for disposition on the joint motion of the Plaintiffs and Defendant, for approval by the Court of a Consent Judgment, pursuant to K.S.A. 50-632. The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General of the State of Kansas, appears by and through James Welch, Deputy Attorney General. The Plaintiff, State of Kansas, *ex rel.* Marc Bennett, District Attorney for the Eighteenth Judicial District of Kansas, appears by and through Marc Bennett, District Attorney of the Eighteenth Judicial District of the State of Kansas.

The Plaintiff, the State of Kansas, *ex rel.* Stephen M. Howe, District Attorney for the Tenth Judicial District of Kansas appears by and through Emilie Burdette, Assistant District Attorney and Special Assistant Attorney General and Jacob Gontesky, Assistant District Attorney. Defendant Credit Acceptance Corporation appears by and through James P. Rankin, Foulston, Siefkin, LLP, Suite 1400, Topeka Tower, 534 South Kansas Avenue, Topeka, Ks 66603-3436.

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

JURISDICTION AND VENUE

1. Derek Schmidt is duly elected, qualified and acting Attorney General for the State of Kansas.
2. Marc Bennett is duly elected, qualified and acting District Attorney for the Eighteenth Judicial District of the State of Kansas.
3. Stephen M. Howe is the duly elected, qualified and acting District Attorney for the Tenth Judicial District of the State of Kansas.
4. The Attorney General's and District Attorneys' authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
5. The Company Credit Acceptance Corporation, hereinafter "the Company," or "Credit Acceptance" is a for profit corporation organized under the laws of the State of Michigan and its principal place of business is located at 25505 West Twelve Mile Road, Suite 3000, Southfield, MI 48034.

6. The Company at all times relevant hereto acted as a “supplier” within the definition of K.S.A. 50-634(l) that engaged in or enforced “consumer transactions” within the definition of K.S.A. 50-624(c).
7. The Company is subject to the Court’s jurisdiction under the Kansas Consumer Protection Act pursuant to K.S.A. 50-638(a).
8. Venue is proper in the Third Judicial District, pursuant to K.S.A. 50-638(b).

GENERAL ALLEGATIONS

9. At all times relevant, the Company has been an indirect auto finance company. It accepts assignment of retail installment contracts from car dealerships approved to use the Company’s programs, including dealers located within the State of Kansas (“Dealers”). Prior to doing business with the Company, the Company and Dealer sign a Dealer Servicing Agreement.
10. At all times relevant and in the ordinary course of business, the Company generated, through its online origination system, all retail installment sales contracts to be assigned to it by Dealers (“Kansas Contracts”). The Company supplied the contract language to Dealers for each Contract assigned to it.
11. At all times relevant, each of the Dealers, in the ordinary course of business, was a “supplier” within the definition of K.S.A. 50-624(l), and each engaged in “consumer transactions” in Kansas within the definition of K.S.A. 50-624(c).
12. At all times relevant and in the ordinary course of business, each Dealer submitted contracts to the Company for administration, servicing, and collection. Upon the Company’s acceptance of the same, the Dealers assigned such contract and Dealers’ security interest in the financed vehicle to the Company.

13. From November 2012 to December 23, 2015, the Kansas Retail Installment Contract contained the following disclaimer:

WARRANTIES SELLER DISCLAIMS. YOU UNDERSTAND THAT THE SELLER IS NOT OFFERING ANY WARRANTIES AND THAT THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES, EXPRESS OR IMPLIED BY THE SELLER, COVERING THE VEHICLE UNLESS THE SELLER EXTENDS A WRITTEN WARRANTY OR SERVICE CONTRACT WITHIN 90 DAYS FROM THE DATE OF THIS CONTRACT. THIS PROVISION DOES NOT AFFECT ANY WARRANTIES COVERING THE VEHICLE THAT MAY BE PROVIDED BY THE VEHICLE MANUFACTURER.

(See Exhibit A.)

14. During this time frame, the Company accepted assignment of the Retail Installment Contract with the above disclaimer language in 2,501 transactions between Kansas consumers ("Affected Consumers") and the above-described Kansas automobile dealers, not including contracts that were cancelled after origination.

PLAINTIFFS' POSITION

15. The disclaimer of warranties, as set forth in paragraph 13 above, violates the Kansas Consumer Protection Act, as it is in direct contradiction to K.S.A. 50-639(a)(1) which states in part:

"(a) Notwithstanding any other provisions of law, with respect to property which is the subject of or is intended to become the subject of a consumer transaction in this state, no supplier shall: (1) Exclude, modify or otherwise attempt to limit the implied warranties of merchantability as defined in K.S.A. 84-2-314, and amendments thereto, and fitness for a particular purpose, as defined in K.S.A. 84-2-315, and amendments thereto..."

THE COMPANY'S POSITION

16. Credit Acceptance has been operating as a good corporate citizen in the State of Kansas since 1990. Since 2000, the Company has helped thousands of consumers

finance the purchase of cars sold by Kansas dealers. Today it is a valuable financing source to over many active dealers.

17. In and around November 2012, the Company engaged third party professionals to make revisions to the Kansas Contract in conjunction with a system enhancement. During this process, a sentence in the warranty disclaimer provision stating the warranty disclaimer did not apply to consumers was inadvertently deleted. Neither the Company nor its third-party professionals detected the change.

18. During this timeframe, the Company did not attempt to enforce the warranty provision as written.

19. Upon learning of the error, the Company promptly corrected the language in the Retail Installment Contract and voluntarily sent 2,249 letters to Affected Consumers with open accounts, explaining, in relevant part:

[D]espite the fact your Contract is missing the above quoted line, your potential warranty rights and claims are protected. Thus, you may pursue an implied warranty claim if you experienced mechanical issues with your vehicle.

We apologize for this clerical error and will be glad to assist you if you have warranty issues respecting the operation and service of your car. If you have had any problems with your vehicle and the selling dealer or any third party has refused or refuses to offer you support or service based upon this provision, please contact us at (855) 862-5100.

20. The Company modified the disclosure, in part, to read as follows:

WARRANTIES SELLER DISCLAIMS. THE FOLLOWING PARAGRAPH DOES NOT APPLY IF THE VEHICLE IS PURCHASED BY A CONSUMER, WHETHER AN INDIVIDUAL, HUSBAND AND WIFE, FAMILY PARTNERSHIP OR A SOLE PROPRIETOR.

21. Plaintiffs do not object to the Company's current disclosure language in Paragraph 20.

22. The modified Kansas Retail Installment Contract is integrated into the Company's online origination system, and the Retail Installment Contract that was in use from November 2012 to December 23, 2015 has been removed from the system and is not accessible to Dealers.
23. The Company does not believe that, under the circumstances, K.S.A. 50-639 was violated.

PARTIES' AGREEMENT

24. The Company is not deemed to admit any violation alleged by Plaintiffs.
25. The Company voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and, pursuant to K.S.A. 50-632.
26. From the time of the execution of this Consent Judgment, the Company agrees to be permanently enjoined from supplying any documents to be used in any consumer transaction in Kansas which exclude, modify or otherwise attempt to limit the implied warranties of merchantability defined in K.S.A. 84-2-314, and amendments thereto, and fitness for a particular purpose, as defined in K.S.A. 84-2-315, and amendments thereto.
27. From the time of the execution of this Consent Judgment, the Company agrees to maintain disclaimer language that fully complies with Kansas law. The Company's current disclosure includes the following language that is consistent with Kansas law:

WARRANTIES SELLER DISCLAIMS. THE FOLLOWING PARAGRAPH DOES NOT APPLY IF THE VEHICLE IS PURCHASED BY A CONSUMER, WHETHER AN INDIVIDUAL, HUSBAND AND WIFE, FAMILY PARTNERSHIP OR A SOLE PROPRIETOR.

28. With respect to transactions wherein the Company generated a Contract that included the language in Paragraph 13, the Company agrees to do the following for open accounts:

- a. For those Affected Consumers with an outstanding balance remaining on their contract, the Company will apply a \$250.00 credit to each Affected Consumer's account within 60 days of the execution of this Consent Judgment.
- b. If the credit exceeds the balance remaining on the Affected Consumer's account, the Company need not send any excess refund to the Affected Consumer.
- c. Any consumer who has already received a resolution regarding their account shall not be eligible for this forgiveness and/or payout. The parties agree to collaboratively review those consumer accounts for eligibility.
- d. The Company further agrees to entry of judgment in the amount of \$250,000.00 to be paid at time of execution of this agreement and distributed equally between the Kansas Attorney General's Office, the Sedgwick County District Attorney's Office, and the Johnson County District Attorney's Office. The parties agree that the amount paid pursuant to entry of this Consent Judgment will be utilized by the respective agencies exclusively for investigative expenses, training economic crime and consumer protection division attorneys, investigators, and staff, and expenses related to community awareness events centered on consumer protection.

29. The Company shall send a letter to each Affected Consumer in Kansas with an outstanding balance remaining on their Contract greater than \$250.00 as of the date of the execution of this Consent Judgment, containing the following:

- a. A reminder that the disclaimer of warranties in the Contract that indicated that the consumer had no rights to enforce the implied warranties of merchantability or fitness for a particular purpose regarding their vehicle is void; and
- b. A statement that the Company will apply a \$250.00 credit to that Affected Consumer's account within 60 days of the execution of this Consent Judgment.

30. The Company shall send a letter to each Affected Consumer in Kansas with an outstanding balance remaining on their contract of \$250.00 or less as of the date of the execution of this Consent Judgment, containing the following:

- a. A reminder that the disclaimer of warranties in the Contract that indicated that the consumer had no rights to enforce the implied warranties of merchantability or fitness for a particular purpose regarding their vehicle is void; and
- b. A statement that the Company has closed the account.

31. The Company shall send a letter to each Affected Consumer in Kansas whose account is closed as of the date of the execution of this Consent Judgment, containing the following:

- a. A reminder that the disclaimer of warranties in the Contract that indicated that the consumer had no rights to enforce the implied warranties of merchantability or fitness for a particular purpose regarding their vehicle is void.

32. The Company further understands and agrees that this Consent Judgment shall not be construed as an approval or sanction by the State of Kansas, the Sedgwick County

District Attorney or the Johnson County District Attorney of the business practices of the Company, irrespective of whether the specific practice is addressed in this Consent Judgment; further, the Company shall not represent the decree as such approval. The Company further agrees and understands that any election by the Plaintiffs to forego any action in response to any information gathered in its investigation of this matter shall not be construed as an approval of or sanction of any of the Company's representations, acts or practices.

33. Nothing in this Consent Judgment shall be construed to limit the rights of any consumer from pursuing any and all state or federal legal remedies they may be entitled to assert against the Company or original seller.

34. Compliance with this Consent Judgment does not relieve the Company of any obligation imposed by applicable federal, state, or local law, nor shall the State of Kansas, the Sedgwick County District Attorney or the Johnson County District Attorney be precluded from taking appropriate legal action to enforce civil or criminal statutes under their respective jurisdictions.

35. Nothing in this Consent Judgment shall be construed to limit the rights of any federal enforcement agency from pursuing any and all legal remedies they may be entitled to assert against the Company or original seller, for violations of any federal law, whether on behalf of any specific consumer or as part of its general enforcement authority.

36. The Company acknowledges and agrees this Court has continuing jurisdiction over this matter pursuant to K.S.A. 50-632(b) and, any breach of any of the terms or conditions set forth herein, shall be treated as a violation of the Court's order and shall be subject to further penalties under the law.

37. This Court shall also retain jurisdiction for the purpose of enabling either party 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.

38. 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. The Company 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 settlement, the judgment herein may not be dischargeable in any federal court bankruptcy proceeding.

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 facts and conclusions of law of this Court.

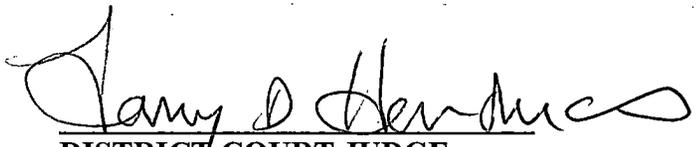
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that restitution and fees shall be applied to Affected Consumers and the investigating agencies as set forth in Paragraph 28.

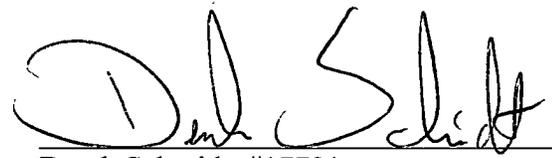
IT IS FURTHER ORDERED ADJUDGED AND DECREED that this Court shall retain jurisdiction over the parties and subject matter of this action for the purpose of rendering any additional equitable relief, orders, decrees, or judgments as may be requested by the parties or may be deemed appropriate by the Court.

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.


DISTRICT COURT JUDGE

By: 
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Date: 8/17/2016

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Date: 08/15/2016

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Date: 08/15/2016

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