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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT
DIVISION 7**

STATE OF KANSAS, *ex rel.*)
DEREK SCHMIDT, Attorney General,)
)
Plaintiff,)
)
v.)
LEWIS AUTO PLAZA, INC.)
)
Defendant.)

Case No. 2018-CV-125

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

CONSENT JUDGMENT

COMES NOW for the Court's consideration the Consent Judgment proposed by the parties pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through counsel Assistant Attorney General Kathryn Carter. Defendant Lewis Auto Plaza, Inc. appears by and through Todd E. Shadid, of Klenda Austerman LLC.

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

PARTIES

1. Derek Schmidt is the duly elected, qualified and acting Attorney General for 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. 50-623, *et seq.*

3. Defendant is a Kansas corporation that has a principal place of business at 2951 SW Fairlawn Rd, Topeka, KS 66614.

4. All references to Defendant herein include acts performed individually, in concert, or by or through employees, agents, representatives, affiliates, assignees, successors and under any and all business names utilized by Defendant, specifically including, but not limited to "Lewis Toyota".

JURISDICTION AND VENUE

5. Defendant stipulates and admits that the Court has personal and subject matter jurisdiction over this controversy pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-692.

6. Defendant stipulates and admits that venue is proper in the Third Judicial District, pursuant to K.S.A. 50-638(b).

ALLEGATIONS

7. All foregoing paragraphs are hereby incorporated by reference. Plaintiff alleges the following:

8. At all times relevant hereto, and in the ordinary course of business, Defendant has acted as a “supplier” as that term is currently defined by K.S.A. 50-624(l).

9. At all times relevant hereto, and in the ordinary course of business, Defendant has engaged in “consumer transactions”, as that term is defined by K.S.A. 50-624(c).

10. At all times relevant hereto, and in the ordinary course of business, Defendant distributed or caused to be distributed prize notices, as that term is defined by K.S.A. 50-692(a)(2) to Kansas consumers by mail.

11. Prize notices distributed in and around April 2015 did not comply with the requirements set out in K.S.A. 50-692, as follows:

- i. K.S.A. 50-692(c)(2)(A) which requires that the value of the prize and odds of winning be disclosed in “immediate proximity” to the prize listing and in the same type,
- ii. K.S.A. 50-692(c)(2)(B) which requires that the odds of prizes to prize notifications be disclosed with specific language, and
- iii. K.S.A. 50-692(c)(2)(C) which requires specific language for the disclosure of the verifiable retail value of prizes.

INJUNCTIVE RELIEF

12. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices alleged in paragraph eleven (11), and Defendant agrees that engaging in any such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Consent Judgment.

13. Defendant agrees 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, K.S.A. 50-623, *et seq.* specifically including the prize notification statute, K.S.A. 50-692 in its entirety.

14. Defendant agrees to cooperate with the Office of the Kansas Attorney General in investigating and remedying any complaints filed with the Consumer Protection Division.

15. Defendant agrees 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.

16. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to each officer, director, member, manager, employee, agent, independent contractor and representative 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.

17. Defendant shall require its independent contractors to comply with the terms set forth in this Consent Judgment to the extent that the independent contractor is acting on behalf of Defendant.

18. Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, assignees, successors and under any and all business names utilized by Defendant, specifically including, but not limited to "Lewis Toyota".

19. The parties voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise settlement of all issues raised herein to avoid the time, cost, expense and risk of litigation.

20. Pursuant to K.S.A. 50-632(b) Defendant is not deemed to admit the alleged violations set forth above.

INVESTIGATIVE FEES AND CIVIL PENALTIES

21. Defendant agrees to pay to the Office of the Kansas Attorney General two thousand five hundred dollars (\$2,500.00) in investigative fees and seven thousand five hundred dollars (\$7,500.00) in civil penalties for violations of the Kansas Consumer Protection Act. Upon receipt of payment in full, Plaintiff agrees to release and discharge Defendant from all claims Plaintiff could have brought for civil penalties, costs, and/or investigative fees for violations of K.S.A. 50-692 based on Defendant's conduct prior to the date of entry of this Consent Judgment.

22. Payment shall be made at the time of the filing of this consent judgment in the form of a cashier's check, money order or other certified funds payable to and delivered to the Office of the Kansas Attorney General, marked CP-12-2801.

OTHER PROVISIONS

23. Jurisdiction is retained by this Court 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 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.

24. 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.

25. 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.

26. The parties understand and agree that this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant 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.

27. Each of Defendant's representatives signing this Journal Entry of Consent Judgment warrants that the representative has been duly authorized by Defendant for whom the representative appears to be acting to enter and execute this Journal Entry of Consent Judgment on behalf of Defendant. Defendant further represents that it has had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

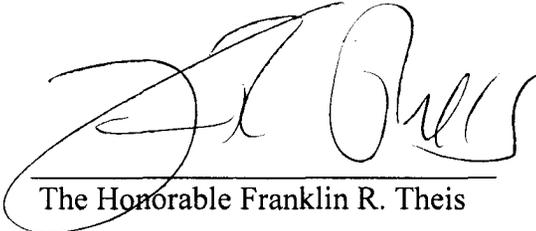
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant immediately become a judgment upon filing. The acts and practices alleged herein are declared to be unconscionable acts and practices, pursuant to K.S.A. 50-692(g) and, further, to be violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-627.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendant and in favor of Plaintiff in the amount of \$10,000.00.

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.

February 16, 2018
Date


The Honorable Franklin R. Theis

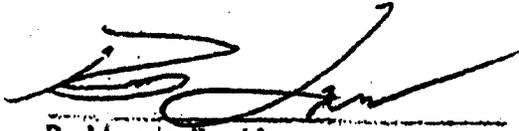
Prepared and approved by:

PLAINTIFF:

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DEFENDANT:



Rod Lewis, President
Lewis Auto Plaza, Inc.

/s/ Todd E. Shadid

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