



Court: Shawnee County District Court
Case Number: 2017-CV-000697
Case Title: State of Kansas ex rel Derek Schmidt Atty General
vs. Ditch & Associates Inc
Type: Journal Entry of Consent Judgment

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson".

/s/ Honorable Teresa L Watson, District Court Judge

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, <i>ex rel.</i>)	
DEREK SCHMIDT, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
DITCH & ASSOCIATES, INC.)	
)	
Defendant.)	
)	

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this date, the parties' 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 Sarah M. Dietz, Assistant Attorney General.

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

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualifying 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 ("KCPA"), K.S.A. § 50-623 *et seq.*
3. Defendant Ditch & Associates, Inc. is a Kansas corporation with a primary place of business at 1925 N.W. Polk Street, Topeka, Kansas 66608.
4. All references to the Defendant herein include acts performed individually, in

concert, or by or through employees, directors, officers, owners, managers, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, including their predecessors, subsidiaries, affiliates and successors.

5. Jurisdiction and venue are appropriate in the District Court of Shawnee County, Kansas, pursuant to K.S.A. § 50-638(a) and (b), respectively.

ALLEGATIONS

6. Plaintiff alleges that the Defendant has acted as a “supplier” in Kansas, as that term is defined by K.S.A. § 50-624(l).

7. Plaintiff alleges that the Defendant has engaged in “consumer transactions” in Kansas K.S.A. § 50-624(c).

8. Plaintiff alleges that at all times relevant hereto, the Defendant engaged in acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.* and, were this matter to be litigated, the following could be proven:

Between January of 2016 to July of 2017, Defendant charged a convenience fee of 3% to consumers who elected to use their credit cards in lieu of other forms of payment. Additionally, Defendant misrepresented the credit card convenience fee by classifying it as a tax on their website.

9. 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.

INJUNCTIVE RELIEF

10. The 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.* and K.S.A. § 16a-2-403.

11. The Defendant shall not cause or encourage third parties, nor knowingly permit third

parties acting on their behalf, to engage in practices from which Defendants are prohibited by this Consent Judgment.

12. The Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

13. The Defendant agrees that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

MONETARY RELIEF

14. The Defendant agrees to refund all credit card convenience fees, regardless of whether represented as a tax or otherwise, to all current consumers as of the entry date of this order. Refunds will be made within 6 months of entry of this order. The refunds will be issued as a credit refund, cashier's check, money order, or other certified funds. Once all refunds have been issued, Defendant will certify to the Office of the Kansas Attorney General that all refunds have been made and include with such certification a report including the name of the consumer who received the refund, the amount of the refund, and the date the refund was provided to the consumer. Upon review of the report, Plaintiff reserves the right to dispute any aspect of the reporting. If parties are unable to reach an agreement regarding the dispute after conferring, Plaintiff may submit the issue to the court for further review and judgment.

15. The Defendant agrees to pay the Office of the Kansas Attorney General \$5,000.00 in

investigative fees for violations of the Kansas Consumer Protection Act pursuant to K.S.A. § 50-636 in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

Sarah M. Dietz, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

OTHER PROVISIONS

16. 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.

17. 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.

18. Compliance with this Consent Judgment does not relieve Defendant of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Plaintiff from taking appropriate legal action to enforce any other statutes under his jurisdiction or from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

19. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Defendant's business practices, nor shall the Defendant represent the Consent Judgment as such approval. The parties further understand and agree 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 this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Defendant, nor shall any inaction by the Attorney General be considered a waiver by the Attorney General of any rights under this Consent Judgment or applicable law.

20. This Consent Judgment represents the entire agreement between Plaintiff and the Defendant, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

21. Defendant hereby represents and warrants that Defendant has had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Defendant under this Consent Judgment and the consequences of breach hereunder. Defendant represents that Defendant has read the Consent Judgment and knows and understands the contents thereof. Defendant further represents and warrants that Defendant is signing this Consent Judgment as the result of his own free act, and that Defendant has not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment.

22. By signing this Consent Judgment, the representative of Defendant represents and warrants that such person is duly and legally authorized to execute this Consent Judgment on behalf of this Defendant, thus binding the Defendant to the provisions of 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 findings of fact and conclusions of law of the Court and any monies owed hereunder by the Defendant immediately becomes a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Defendant in favor of Plaintiff in the amount of \$5,000.00 in investigate fees and in the additional amount to be refunded to the consumers.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, 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.

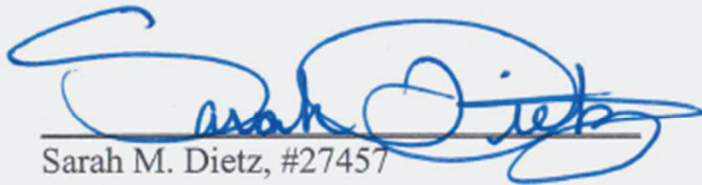
IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF THE ELECTRONIC FILE STAMP.

Respectfully submitted,

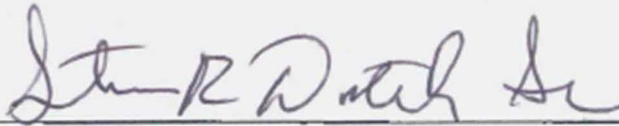


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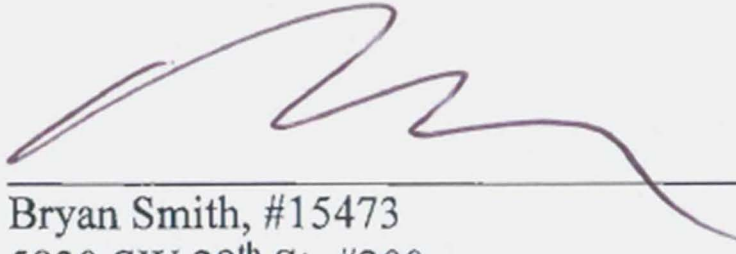


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Approved by:



Steven R. Ditch, Sr.
Ditch & Associates, Inc.



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