

IN THE DISTRICT COURT OF LYON COUNTY, KANSAS

FILED  
LYON COUNTY  
DISTRICT COURT  
2013 MAR 15 PM 2 19  
CLERK OF THE  
DISTRICT COURT

STATE OF KANSAS, *ex rel.* )  
DEREK SCHMIDT, Attorney General, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
COMMERCIAL MAINTENANCE )  
CHEMICAL CORP. )  
 )  
 )  
Defendant. )

Case No. 13CV58

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this \_\_\_\_ day of \_\_\_\_\_, 2013, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 75-7501 *et seq.* The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Jackie Williams, Assistant Attorney General. Defendant appears through William Price, President of Commercial Maintenance Chemical Corp. (CMCC), voluntarily submitting himself and CMCC to the jurisdiction of the court; however, he elects not to appear in person.

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, 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 False Claims Act (KFCA), K.S.A. 75-7501 *et seq.*

3. Defendant Commercial Maintenance Chemical Corp. is a for profit corporation organized and existing under the laws of New York.

4. As referred to herein, "Defendant" means Commercial Maintenance Chemical Corp., and its employees, directors, officers, owners, members, 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. Defendant has a principal place of business at 43 Heisser Ct., Farmingdale, New York 11735.

6. The Court has subject matter jurisdiction over this case pursuant to K.S.A. 75-7501 *et seq.*

7. The Court has personal jurisdiction over the parties pursuant to K.S.A. 60-308(b)(1)(A)

8. Venue is proper in this Court pursuant to K.S.A. 75-7510.

9. Defendant is a "person" within the definition of K.S.A. 75-7502(d).

10. Defendant presented or caused to be presented "claims" to "political subdivisions" as those terms are defined by K.S.A. 75-7502(b) and (c) respectively.

#### **DEFINITIONS**

The Defendant stipulates and agrees that as used herein, the following terms shall be given their assigned meanings:

11. "Claim" includes any request or demand, whether under contract or otherwise, for money, property or services made to any employee, officer or agent of the State or any Political Subdivision thereof or made to any contractor, grantee or other recipient if the State or any Political Subdivision thereof provides any portion of the money, property or services which is requested or demanded, or if the State will reimburse such contractor, grantee or other recipient for any portion of the money or property which is requested or demanded.

12. "Knowing" and "knowingly" means that a person, with respect to information, does any of the following: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information.

13. "Political Subdivision" means political or taxing subdivisions of the State of Kansas, including municipal and quasi-municipal corporations, boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups or administrative units thereof, receiving or expending and supported, in whole or in part, by public funds and any municipality.

14. The "State" means the State of Kansas and Political Subdivisions thereof.

### **ALLEGATIONS**

15. The State of Kansas alleges that the Defendant, while presenting or causing to be presented claims to the Political Subdivisions set forth in paragraph twenty-one (21) herein, committed acts and practices in violation of the KFCA, which acts and practices include, but are not limited to the following:

- a. Defendant knowingly presented or caused to be presented Claims, in the form of invoices, to said Political Subdivisions for unordered and sample products

after offering free samples to said Political Subdivisions and then shipping an amount beyond the agreed upon free sample amount in violation of K.S.A. 75-7503(a)(1);

- b. Defendant knowingly presented or caused to be presented Claims, in the form of invoices, to said Political Subdivisions for unordered products after sending products without receiving orders from said Political Subdivisions for such products in violation of K.S.A. 75-7503(a)(1);
- c. Defendant knowingly made or used false records, in the form of invoices, which Defendant sent to said Political Subdivisions demanding payment for the unordered and sample products in violation of K.S.A. 75-7503(a)(2);

16. Defendant denies the allegations and agrees to this Consent Judgment without trial or adjudication of any issue of fact or law and solely for the purpose of settlement.

#### **INJUNCTIVE RELIEF**

17. Defendant agrees to refrain, and to be permanently enjoined, from engaging in those acts and practices set forth in paragraph fifteen (15) herein, 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.

18. Defendant agrees to refrain, and to be permanently enjoined, from presenting or causing to be presented false claims to any employee, officer, or agent of the State or any Political Subdivision of the State.

19. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure, for the purpose of avoiding compliance with the terms of this Consent Judgment.

20. Defendant agrees to be permanently enjoined from doing business of any type and/or description in the state of Kansas.

## RESTITUTION

21. Defendant agrees to provide a full refund to the following Political Subdivisions, in the amounts set forth below totaling Two Thousand Four Hundred and Twelve Dollars and Eighty-Eight Cents (\$2412.88).

- a. City of Emporia: \$131.35;
- b. City of Cawker City: \$120.48;
- c. City of Wilson: \$1,776.33;
- d. City of Concordia: \$384.72;

22. Defendant agrees to pay the aforementioned amounts upon the filing of this Consent Judgment. Defendant shall make such payments in the form of a cashier's check, money order or check disbursed through an attorney's trust account, payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General  
ATTN: Jackie Williams, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

23. Defendant agrees that pursuant to 11 U.S.C. 523 *et seq.*, and due to the nature of the conduct underlying this settlement, any unpaid restitution shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

24. Such payments shall be distributed by the Attorney General to the Political Subdivisions as set forth in paragraph twenty-one (21) herein.

## COSTS AND ATTORNEY FEES

25. Defendant agrees to pay to the Attorney General Two Thousand Five Hundred and Eighty Seven Dollars and Twelve Cents (\$2587.12) in investigative and attorney fees, pursuant to K.S.A. 75-7503.

26. Defendant shall make such payment upon the filing of this Consent Judgment in the form of a cashier's check, money order or check disbursed through an attorney's trust account, payable to the Office of the Kansas Attorney General, and mailed to:

Office of the Kansas Attorney General  
ATTN: Jackie Williams, Assistant Attorney General  
120 SW 10<sup>th</sup> Ave, 2<sup>nd</sup> Floor  
Topeka, Kansas 66612

27. Defendant agrees that pursuant to 11 U.S.C. 523 *et seq.*, and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

## GENERAL PROVISIONS

The parties have stipulated and agreed to the following General Provisions:

28. 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.

29. 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.

30. Compliance with this Consent Judgment does not relieve the 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 the Attorney General's jurisdiction.

31. 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 Defendant nor shall the Defendant represent this Consent Judgment 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 this 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.

32. 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.

33. 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 or

her behalf, except for those contained in this Consent Judgment. Defendant further represents that he retained and had the advice of private legal counsel throughout negotiations in this matter up and until the preparation of this Consent Judgment; however, is financially unable to retain private legal counsel to review this Consent Judgment.

34. The Defendant's representative, signing this Journal Entry of Consent Judgment, warrants that the representative has been duly authorized by the Defendant, for whom the representative appears, to enter and execute this Journal Entry of Consent Judgment on behalf of the Defendant, thus binding the Defendant to the provisions of the Consent Judgment.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED**

- A. The stipulations and agreements of the parties contained herein are adopted and approved pursuant to the Kansas False Claims Act, K.S.A. 75-7501 *et seq.* as the Findings of Fact and Conclusions of Law of the Court.
- B. Defendant is enjoined from the acts and practices set forth in paragraph fifteen (15) herein; and is further enjoined from doing business of any type and/or description in the state of Kansas.
- C. Judgment is entered against Defendant in favor of the Plaintiff in the amount Two Thousand Five Hundred and Eighty Seven Dollars and Twelve Cents (\$2587.12) as investigative and/or attorney fees; and restitution to the state or political subdivisions identified in paragraph twenty-one (21) in the amounts set forth therein for a total of



Two Thousand Four Hundred and Twelve Dollars and Eighty Eight Cents

(\$2412.88).

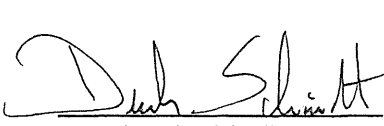
**IT IS SO ORDERED.**




DISTRICT COURT JUDGE

APPROVED:

PLAINTIFF, THE PEOPLE OF THE STATE OF KANSAS

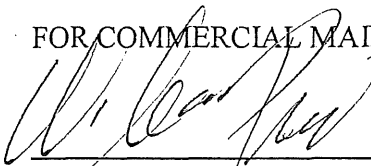
 Date: 2/15/2013

Derek Schmidt, #17781  
Kansas Attorney General  
Office of Kansas Attorney General, Derek Schmidt  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751

 Date: 2/15/2013

Jackie Williams, #07333  
Assistant Attorney General  
Office of the Kansas Attorney General  
120 Southwest 10<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Topeka, Kansas 66612  
(785) 296-3751

FOR COMMERCIAL MAINTENANCE CHEMICAL CORP.

 Date: 2/8/13

William Price  
President, Commercial Maintenance Chemical Corp.

**CERTIFICATE**

The above is a true and correct copy of the Document which is on file or of record in this court.

Dated this 15 day of March, 2013



Clerk of Dist. Court  
Lyon County, Kansas