

James R. McCabria, #16563
Assistant Attorney General
Office of the Attorney General
120 SW 10th Street, 2nd Floor
Topeka, KS 66612-1597
(785) 296-3751

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K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS.
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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT**

STATE OF KANSAS, *ex rel.*)
PHILL KLINE, Attorney General)
)
Plaintiff)
)
v.) **Case No. 06-C- 25**
)
Sharp Honda, Inc.)
)
Defendant)

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW ON THIS 12 DAY of ^{January} ~~November~~, 2006, there comes before the Court the Petition to Approve Consent Judgment filed in this matter. Plaintiff, the State of Kansas, *ex rel.* Phill Kline, Attorney General, appears by and through counsel, James R. McCabria, Assistant Attorney General. Defendant Sharp Honda, Inc., appears by and through Jerold R. Berger. There are no other appearances.

WHEREUPON, the Parties advise the Court they have stipulated and agree to the following matters:

1. Phill Kline is the Attorney General of the State of Kansas.
2. The Attorney General's 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.* K.S.A. 50-632(b) authorizes the parties to resolve matters pursuant to a

Consent Judgment and the parties have agreed to do so in this instance.

3. Defendant Sharp Honda, Inc. ("Sharp" or Defendant) is a Kansas corporation with its principal place of business being located at 1818 Topeka Blvd., Topeka, Kansas.

4. Defendant is a supplier within the definition of K.S.A. 50-624(j) and has engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c). The nature of Defendant's business is selling and soliciting for sale property and/or services to consumers at retail prices within this State.

5. Defendant admits that this Court has personal and subject matter jurisdiction over all matters and parties hereto.

6. The Attorney General alleges that, were this matter to be litigated, the following facts could be proven:

a) On or about Saturday, April 23, 2005, Respondent entered into a contract for the sale of a new 2005 Honda Odyssey van ("van") to Kansas consumer Jacque Belderok. During the course of negotiating and inspecting the van, Belderok noticed a scratch on some inside molding and a rattling sound in the rear gate. As part of the agreement between the parties, Belderok requested, and Respondent agreed, to fix these issues.

b) On or about Monday, April 25, 2005, Respondent delivered the van to Belderok and Belderok accepted the same. At no time prior to delivery did Respondent disclose to Belderok, directly or in any other fashion, that the vehicle differed in any material respect from any other new Honda Odyssey that might be delivered to a consumer purchasing a new van.

c) In truth and in fact, the van delivered to Belderok was not in new condition but had been damaged in transit to the dealership. The damage to the vehicle included,

but was not limited to, the shattering of the rear windshield of the van, right front outer mirror assembly broken, damage to the right quarter panel, broken taillamp assembly, dents on the roof and scratches to the paint on the roof and rear door of the van. Prior to delivering the van to Belderok, Respondent replaced the rear windshield and attempted to repair the other damage. After accepting delivery, Belderok began discovering certain defects related to the prior damage.

d) The left sliding door made a scratching noise during the last two inches of travel before closing. On or about May 12, 2005, Belderok's seven-year old daughter found several pieces of tinted glass in and around the middle and back seats of the van. Belderok brought the van back to Respondent's dealership on or around May 14, 2005, to have some paint chips repaired and showed the salesperson who had sold the van, Tom Gettler, some of the glass shards they had found in the van. Belderok inquired of Gettler at that time if there had been any prior damage to the vehicle. Gettler denied any actual knowledge of prior damage at that time.

e) While at the dealership, Belderok, in the presence of Gettler, discovered some additional nicks and scratches on the rear gate. Belderok left the van with Respondent to make repairs to the nicks and scratches and returned later that day. Upon return and further questioning of Gettler by Belderok, Gettler acknowledged that, in fact, the rear window had been damaged in transit to the dealership. That same day, Belderok requested to speak with the manager, Steve Matukewicz, about the prior damage. Matukewicz acknowledges that the prior damage existed and that the dealership had submitted a claim to its insurance provider for the repair.

f) Whether a vehicle that is represented as "new" has had prior damage that

the dealership repaired prior to sale such that the vehicle is materially different from a similar new vehicle is a material fact for consumers in deciding whether to transact business with a particular supplier or purchase a particular vehicle.

g) The van sold to Belderok by Respondent or its agents differed materially from a new van that had not had prior damage.

h) Respondent, through its agents, knowingly or with reason to know, represented that the van sold and delivered to Belderok was new or in its original factory condition when, in truth and in fact, it had been altered, reconditioned or otherwise modified to an extent that was materially different from the representations made to Belderok, all in violation of K.S.A. 50-626(b)(1)(C).

i) Respondent or its agents made willful use of exaggeration, falsehood, innuendo or ambiguity as to the condition of the vehicle at the time of sale or delivery, all in violation of K.S.A. 50-626(b)(2).

With respect to the above, the Attorney General alleges that the foregoing facts constitute the violations of the KCPA identified above. Each such allegation, taken separately or as a whole, had the capacity to deceive a consumer and did, in fact, deceive Belderok.

7. Defendant voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law and without admitting any allegation herein.

8. Defendant agrees to refrain from and to be permanently enjoined from engaging in the acts and practices described in Paragraph 6(h) and 6(j) hereof in any future transactions.

9. Defendant agrees that engaging in acts or similar acts to those described in Paragraph 6(h) and/or 6(j) hereof shall constitute a violation of this Order and hereby acknowledges that, in that event, civil penalties of up to \$10,000.00 per violation may be

imposed by the Court.

10. Defendant agrees to pay \$5,000.00 in investigative fees, expenses and civil penalties to the "Office of the Attorney General" of the State of Kansas. Payment shall be by cashier's check and shall be delivered to the Attorney General of the State of Kansas upon signing this Consent Judgment.

11. The Attorney General acknowledges that Defendant has already taken steps prior to the entry of the Consent Judgment to make full restitution to Kansas Consumer Jacque Belderok and no further restitution or damages is herein ordered.

12. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant.

13. Defendant agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, where such restructuring is done for the purpose or object of avoiding compliance with the terms of this Consent Judgment.

14. 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 hereof.

15. 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.

16. 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 Attorney General from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction. Defendant further understands that nothing in this Consent Judgment shall preclude the Attorney General from taking further action against Defendant in operating this or any other program upon belief that the program is being promoted or operated in a fashion that otherwise violates the law.

17. The parties understand 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 which the Attorney General now has in his possession and believes forms the basis for a violation of any law within his jurisdiction to enforce 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.

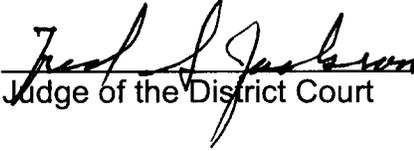
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendant shall immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Defendant and in favor of Plaintiff in the amount of \$5,000.00.

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

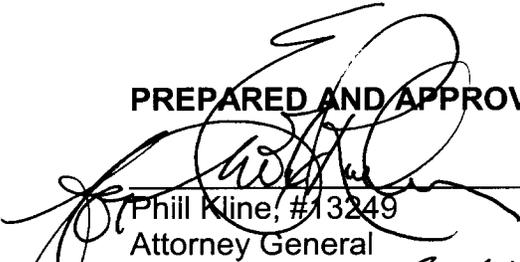
approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

IT IS SO ORDERED.

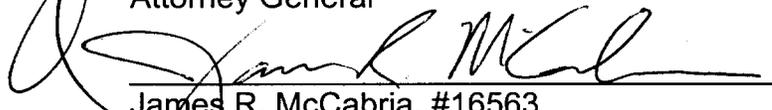


Judge of the District Court

PREPARED AND APPROVED BY:

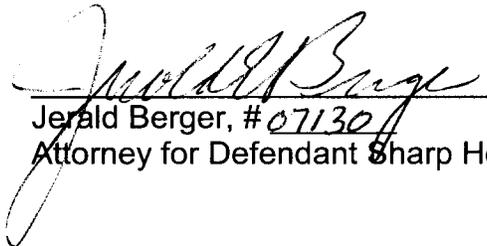


Phill Kline, #13249
Attorney General



James R. McCabria, #16563
Assistant Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
(785) 296-3751
Attorney for Plaintiff

APPROVED BY:



Jerald Berger, #07130
Attorney for Defendant Sharp Honda, Inc.