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FILED BY CLERK
K.S. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

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

DIV-9

**STATE OF KANSAS, *ex rel.*
PHILL KLINE, Attorney General**

Plaintiff

v.

Case No. 06-C-1271

**FIRST CAPITAL BANKCARD, Inc.
a Missouri Corporation,**

Defendants

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

Journal Entry of Consent Judgment

NOW ON THIS 29 DAY of July, 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 First Capital Bankcard, Inc., appears by and through its attorney, Toby Egan. 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 is a corporation organized under the laws of the State of Missouri and is in good standing in the State of Missouri. Defendant's principle place of business is located at 1601 E. 18th St. #360, Kansas City, MO 64108. Defendant does business in the state of Kansas as First Capital Bankcard.

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

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

- A. The nature of Defendant's business in the State of Kansas includes, but is not limited to, the solicitation and sale of credit card processing equipment and software to businesses that accept or wish to accept credit cards for purchases.
- B. Defendant's sales include, but are not limited to, sales to sole proprietors or family partnerships who seek or acquire property or services for business purposes and who qualify as "consumers" pursuant to KSA 50-624(b).
- C. Defendant's method of conducting its sales in Kansas occur through Defendant's representatives or employees ("agents") personally soliciting the sale at the place of business of the consumer and the agreement or offer to purchase is made at a place other than the Respondent's place of business, and constitute "door-to-door" sales, all as contemplated in KSA 50-640(c)(1).
- D. It is the habit and practice of Defendant's agents, when engaging in "door-to-door" sales, to present certain documents to the consumer, including the following:

- F.A.C.T. Sheet
- Merchant Receipt Form
- Merchant Receipt Form Notice of Cancellation
- CIT Equipment Lease
- CIT Notice of Cancellation
- First Capital Bankcard Equipment Finance Lease
- First Capital Bankcard Merchant Application

Merchant Processing Agreement: Electronic Debit / Credit Application
EPS Application Addendum
Check First Application and Purchase Agreement
New Account Checklist
CIT Installation Verification Report

- E. Once these documents are presented to and accepted by the consumer, the Defendant's agents are trained to retain all documents pertaining to the transaction at the time of the transaction and leave only the Merchant Receipt Form, Merchant Receipt Form Notice of Cancellation and CIT Notice of Cancellation with the consumer.
 - F. None of the forms or information left with the consumer contain or includes a fully completed copy of any contract pertaining to the sale as required by KSA 50-640(b)(1).
 - G. Respondent's agents have, in connection with certain transactions occurring in the State of Kansas, misrepresented to consumers the nature of the consumer's right to cancel the transaction, either by the terms of the contract between the parties and/or pursuant to the statutory right to cancel, all in violation of KSA 50-626(b)(1)(A) and/or 50-640(b)(6).
 - H. Defendant First Capital engages in deceptive acts and practices in violation of K.S.A. 50-626(a) by and through the acts of its agent who fail to provide consumers with the statutory notices and contracts required by the Act.
 - I. Defendant First Capital engages in deceptive acts and practices in violation of K.S.A. 50-626(a) by and through the acts of its agents who verbally misrepresent to consumers the nature and extent of their right to cancel the transactions which they solicit.
 - J. Defendant First Capital engages in unconscionable acts and practices in violation of K.S.A. 50-627(a) by and through the acts of its agents who solicit and enter into transactions by use of misleading statements of opinion which are excessively one-sided in favor of the Defendant.
6. Defendant, without admitting to the truth of any of the allegations in paragraph 5, voluntarily agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.
7. Defendant agrees to refrain from and to be permanently enjoined from engaging in the acts and practices described in Paragraph Six hereof which are alleged to be violations of the KCPA in any future transactions.

8. Defendant agrees that engaging in acts or similar acts to those described in Paragraph Six hereof shall constitute a violation of this Order.

9. Defendants agree to pay \$15,000 in investigative fees, expenses and civil penalties to the "Office of the Attorney General" of the State of Kansas. Payment shall be made in the form of a cashier's check or other certified funds made payable to the Office of the Attorney General and shall be delivered at the time of the entry of this Consent Judgment.

10. Defendants further agree to pay \$2,896.29 in restitution to the following consumers:

Gregory McDiffett -	\$ 236.27
Aaron Hect -	\$ 454.93
Debbie Simmons -	\$2,205.09

as payment of damages to consumers as authorized by K.S.A. 50-632(b)(3).

In addition, Defendant agrees to take such steps to cancel any remaining obligation that the above consumers have on any contracts which were executed as part of their transaction. Defendant has represented that it has already cancelled or resolved disputes with the following consumers:

Pete Pilatus
Quentin Yoho
Guillermo Morell

Defendant and Plaintiff agree that nothing herein shall be construed to prevent any individual consumer not named herein from pursuing their own claim for relief under the KCPA, or any other theory of law, nor shall the Attorney General be prevented from taking such actions on behalf of any such consumer from and after the date of this Consent Judgment, except that the Attorney General shall not have authority to pursue additional

civil penalties in any such action for violations based upon facts and circumstances similar to those alleged to give rise to the violations herein.

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

12. Defendants agree 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.

13. 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.

14. 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.

15. 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 its business upon belief that such operations are being

promoted or conducted in a fashion that otherwise violates the law.

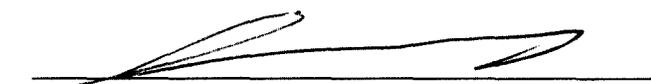
16. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or 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 \$17,896.29.

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, subject to such further proceedings as may be necessary and allowed hereunder or by law.

IT IS SO ORDERED.



Judge of the District Court

State of Kansas ex rel Kline v. First Capital Bankcard
Case No. 06 CV _____

APPROVED BY:


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