

C-05-000365

E-05-000037

FILED
DOUGLAS COUNTY
DISTRICT COURT

IN DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
Division 5

2008 JUN 26 P 1:41

STATE OF KANSAS, *ex rel.*)
STEPHEN N. SIX, Attorney General,)
)
Plaintiff,)
)
vs.)
)
TRANSMASTERS TOWING, and)
KEVIN RAASCH, individually,)
)
Defendants.)

BY: _____
[Signature]

Case No. 05 C 581

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 26 day of June, 2008, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-623(b). Plaintiff, the State of Kansas, *ex rel.* Stephen N. Six, Attorney General, appears by and through Emilie Burdette Rush, Assistant Attorney General. Defendants appear by and through Defense counsel, Nicholas J. Porto of Baty, Holm & Numrich, P.C.

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

1. Stephen N. Six is the duly appointed and acting Attorney General of 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. 50-632(b).

3. Defendants have a principal place of business located at 1787 East 1450 Road in Lawrence, Kansas.

4. All references to Defendants herein include acts individually, in concert, or by or through employees, agents, representatives, affiliates, assignees and successors.

5. The Court has subject matter and personal jurisdiction pursuant to the Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*

6. Venue is proper under K.S.A. 50-638(b) in the Seventh Judicial District of Kansas (Douglas County).

7. At all times relevant hereto, Defendants have acted as “suppliers” as defined by K.S.A. 50-624(j).

8. At all times relevant hereto, Defendants have engaged in “consumer transactions” as defined by K.S.A. 50-624(c).

9. Pursuant to K.S.A. 50-632(b) the Plaintiff alleges and Defendants deny that Defendants engaged in the following unconscionable acts or practices in violation of the Kansas Consumer Protection Act:

Defendants charged or caused to be charged excessive prices to Kansas consumers in relation to nonconsensual tow services of said Kansas consumers’ vehicles while those vehicles were operated within the State of Kansas, specifically within Douglas County, Kansas, in violation of K.S.A. 50-627(b)(2).

10. Defendants specifically deny that any of the transactions described in Plaintiff’s Petition were “nonconsensual” and further deny that any of the prices defendants charged were excessive. To the contrary, Defendants maintain that all of the prices were reasonable. Defendants further state that several of the consumers failed to pay defendants’ tow tickets, which resulted in substantial

losses for Defendants, and that the federal Interstate Commerce Commission Termination Act ("ICCTA") precludes states or governmental entities from imposing civil money penalties or investigative fees on towers.

11. Defendants voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law and without admitting any allegation contained herein.

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

13. Defendants agree to pay a total of \$366.73 in restitution to the consumers listed in Exhibit A attached hereto. This sum shall represent all monies due and owing under the terms of this document.

14. Such restitution shall be delivered to the Office of the Kansas Attorney General at the time of signing this document. Payment shall be made by check(s) payable directly to the named consumers. Such check(s) shall be delivered by the Office of the Kansas Attorney General to the appropriate consumers at such time this Journal Entry is finalized by the Court. Named consumers shall execute a release prepared by the parties releasing Defendants from any and all future claims regarding the allegations herein.

15. Defendants agree to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structure(s), for the purpose of avoiding compliance with the terms of this Consent Judgment. However, Plaintiffs specifically recognize that Defendants have complied with the terms of this Consent Judgment by paying \$366.73 at the time of the execution of the agreement.

16. This Court shall retain jurisdiction 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 or compliance of any provisions contained herein.

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 Defendants 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.

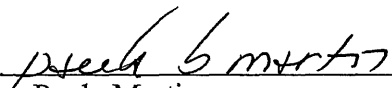
19. The parties understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulations and agreements 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 Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants make full restitution to Kansas consumers named herein in the amount of \$366.73.

Plaintiff acknowledges that such restitution has been paid at the time of Defendants' execution of this document.

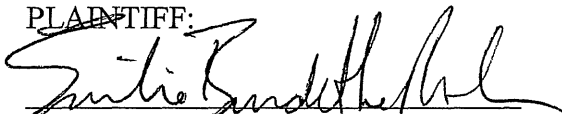
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, K.S.A. 50-632(b), the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.



Hon. Paula Martin

Prepared and approved by:

PLAINTIFF:



Emilie Burdette Rush, #22094

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