

IN THE DISTRICT COURT OF GRANT COUNTY, KANSAS

FILED

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STATE OF KANSAS, *ex rel.*,)
 STEVE SIX, Attorney General,)
)
 Plaintiff,)
)
 vs.)
)
 DIMITT OIL, INC.,)
 d/b/a LARRY'S OIL COMPANY,)
)
 and,)
)
 SPENCER DIMITT, an individual,)
)
 Defendants.)

GR
CLERK

Case No. 2009-CV-3

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

JOURNAL ENTRY OF CONSENT JUDGMENT

NOW on this 27th day of October, 2009, Plaintiff's Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. 50-632(b). Plaintiff, the State of Kansas, *ex rel.*, Steve Six, Attorney General, appears by and through Tai J. Volkins, Assistant Attorney General. Defendants appear by and through Pete Olson, Brooks, Olson & Peterson.

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

1. Steve Six is the 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

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Protection Act, K.S.A. 50-623 *et seq.*

3. Defendant Dimitt Oil, Inc., d/b/a Larry's Oil is a for profit corporation that is registered with the Kansas Secretary of State.
4. Defendant Dimitt Oil, Inc., d/b/a Larry's Oil has a principal place of business at West Highway 160, Ulysses, Kansas 67880.
5. Spencer Dimitt is the owner and operator and alter-ego of Dimitt Oil, Inc. and is responsible for all day to day business decisions.
6. Defendants sell bulk fuel to consumers that are typically engaged in agricultural farming.
7. Defendants are suppliers as that term is defined by K.S.A. 50-624(j).
8. The Court has personal and subject matter jurisdiction over the parties for the sole purpose of entering into this Consent Judgment and any subsequent enforcement thereof.

7. The Plaintiff alleges Defendants engaged in the following deceptive and unconscionable acts and practices in violation of the Kansas Consumer Protection Act:

- a. Defendants sent or caused to be sent bills to consumers that were false or misleading as to the amounts owed and the amount of fuel delivered in violation of K.S.A. 50-626(a) and K.S.A. 50-627(b)(6).
- b. Defendants sent or caused to be sent bills to consumers that willfully used written falsehood as to the amounts of fuel delivered and the amount owed in violation of K.S.A. 50-626(b)(2).
- c. Defendants sent or caused to be sent bills to consumers that willfully concealed or omitted material facts regarding the amount of fuel delivered to consumers in violation of K.S.A. 50-626(b)(3).
- d. Defendants collected payment for fuel delivery that did not occur in violation of K.S.A. 50-627(a).

8. Defendants voluntarily agree to this Consent Judgment without trial or

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adjudication of any issue of fact or law.

9. Defendants agree to refrain from and to be permanently enjoined from engaging in the sale of petroleum products by delivery to consumers and those acts and practices alleged to be unlawful and unconscionable in Paragraph Seven (7) of this Consent Judgment. Defendants agree that engaging in such acts or similar acts, after the date of this Consent Judgment, shall constitute a violation of this Order and civil penalties will be imposed for each subsequent violation.

10. Defendants agree to be permanently enjoined from advertising, selling, soliciting, or executing any consumer transaction for sale of services related to the delivery of petroleum products as defined by K.S.A. 50-624(c).

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

11. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives within five days of signing the Consent Judgment.

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, for the purpose of avoiding compliance with the terms of this Consent Judgment.

13. Defendants agree to pay \$50,000.00 to constitute restitution, costs and expenses to the office of the Kansas Attorney General. The office of the Kansas Attorney General shall make restitution to consumers identified in Exhibit A, attached to this document. Restitution shall be made on a pro-rated basis, as determined by the office of

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the Kansas Attorney General. Payment shall be made by cashier's check or money order, and shall be made payable and delivered to the Attorney General of the State of Kansas at the time of Defendant's signing 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 thereof.

15. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reason, 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 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.

17. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the Kansas Attorney General of the business practices of Defendants nor shall Defendants represent the decree of such 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 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.

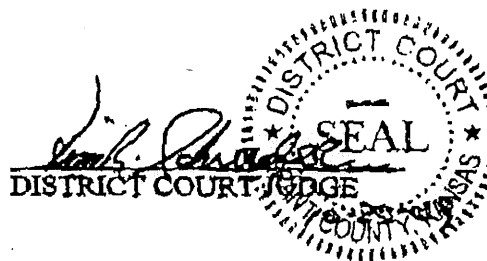
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the stipulation and agreement of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against Defendants in favor of Plaintiff in the amount of \$50,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay all costs associated with this action.

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.



Prepared and Approved by:

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Attorney for Plaintiff

Attorney for Defendants



Spencer Dimitt
For Dimitt Oil, Inc.
Defendant