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**FILED**  
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CLERK OF DISTRICT COURT  
RENO COUNTY, KANSAS  
BY \_\_\_\_\_

**IN THE DISTRICT COURT OF RENO COUNTY, KANSAS**  
Division 2

STATE OF KANSAS, *ex rel.*, )  
CARLA J. STOVALL, Attorney General )  
 )  
Plaintiffs, )  
 )  
v. )  
MELVIN H. CLAPHAN, individually, and )  
d/b/a M & W Termite and Pest Control, )  
 )  
Defendant. )

Case No. 00-C-28

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

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 19<sup>th</sup> day of July, 2001, comes before the Court the Journal Entry of Consent Judgment entered into between the parties pursuant to K.S.A. §50-632(b). The State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Melvin H. Claphan, individually, and d/b/a M & W Termite and Pest Control appear by and through counsel, Michael C. Robinson.

Whereupon, the parties advise the court that they have stipulated and agreed to the following matters:

### THE PARTIES

1. Carla J. Stovall is the Attorney General of the State of Kansas.
2. Defendant Melvin H. Claphan is an individual doing business as a sole proprietor with a principal place of business located at 3209 North Plum, Hutchinson, Kansas 67502.
3. Defendant is a supplier as defined by K.S.A. §50-624(i).
4. At all times relevant hereto, and in the ordinary course of business, Defendant have engaged in consumer transactions in Kansas as defined by K.S.A. §50-624(c).

### JURISDICTION AND VENUE

5. Defendant enters his voluntary general appearance.
6. Defendant admits the Court has jurisdiction over the parties and the subject matter.
7. Defendant admits venue is proper in the Twenty Seventh Judicial District of Kansas (Reno County).

### ALLEGATIONS

8. The Attorney General alleges the following acts and practices by Defendant are violations of the Kansas Consumer Protection Act and are deceptive and/or unconscionable:
  - a. Defendant made representations, knowingly or with reason to know, that property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have, *to wit*:
    1. Defendant represented to consumers that his work was “guaranteed” when, in truth and in fact, no such guarantee existed, a deceptive act or practice in violation of K.S.A. 50-626(b)(1).
    2. Defendant represented to consumers that he was applying chemicals that were approved and designed for the treatment of termites and/or other pests when, in truth and in fact, he applied chemicals, such as

kerosene and the off-the-shelf pesticide known as Raid, that are not for the treatment of termites and/or other pests, a deceptive act or practice in violation of K.S.A. 50-626(b)(1).

- b. Defendant made representations knowingly or with reason to know that Defendant had a sponsorship, approval, status, affiliation or connection that the Defendant did not have, *to wit*, Defendant represented to consumers that he was properly licensed by the Kansas Department of Agriculture to apply pesticides in the State of Kansas when, in truth and in fact, Defendant was not licensed, a deceptive act or practice in violation of K.S.A. 50-626(b)(2).
- c. Defendant made representations knowingly or with reason to know that his property or services were of a particular standard, quality, or grade when, in truth and in fact, his property and services were of another standard, quality, or grade that differed materially from the representations, *to wit*, Defendant represented that the pest control services he provided met the minimum standards required by the Kansas Department of Agriculture when, in truth and in fact, they did not, and Defendant represented that the chemicals he applied met the minimum requirements to provide adequate treatment for termites and/or other pests when, in truth and in fact, they did not, a deceptive act or practice in violation of K.S.A. 50-626(b)(2)(D).
- d. Defendant made representations knowingly or with reason to know that property or services has uses, benefits or characteristics without relying upon and possessing a reasonable basis for making such representations, *to wit*, Defendant misrepresented that the chemicals, including ordinary kerosene,

that he applied would protect the place of application from infestation by termites, a deceptive act or practice in violation of K.S.A. 50-626(b)(2)(F).

- e. Defendant falsely stated, knowingly or with reason to know, that consumer transactions involved consumer rights or remedies, to wit, he represented that his services were “guaranteed” when, in truth and in fact, they were not, a deceptive act or practice in violation of K.S.A. 50-626(8).
- f. Defendant, knowingly or with reason to know, took advantage of the inability of consumers reasonably to protect the consumers’ interests because of consumers’ ignorance, inability to understand the language of an agreement, or similar factor, to wit, Defendant represented to consumers that he was providing professional pest control services, which would include professional evaluation of matters such as which chemicals should be used and what treatment methods were appropriate for the consumer’s needs (technical matters beyond the understanding of ordinary consumers), when, in truth and in fact, Defendant was unlicensed and applied chemicals unsuited for the services he provided, an unconscionable act in violation of K.S.A. 50-627(b)(1).
- g. Defendant knew or had reason to know that consumers who purchased pest control services from Defendant were unable to receive a material benefit from the subject of the transaction because Defendant applied chemicals that were unsuited for the treatment of termites and/or other pests, an unconscionable act in violation of K.S.A. 50-627(b)(3).

### INJUNCTIVE RELIEF

9. Defendant agrees to refrain from and to be permanently enjoined from engaging in those acts and practices alleged to be deceptive and/or unconscionable in paragraph eight (8) of this Consent Judgment, including all subparagraphs thereof. Defendant agrees that engaging in such acts or similar acts after the date of this Consent Judgment, shall constitute a violation of this Journal Entry.

10. Defendant agrees 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.

11. Defendant agrees to pay the sum of \$5,399.00 as restitution to the consumers listed in Exhibit A, in their respective amounts, pursuant to K.S.A. §50-632(a)(3). Said payment shall be a judgement for the Plaintiff.

12. Defendant agrees to resolve any complaints filed with the Office of the Attorney General regarding Defendants after the date of this Consent Judgment to the satisfaction of the Attorney General within 30 days of the date such complaint is forwarded to Defendants.

### INVESTIGATIVE FEES AND CIVIL PENALTIES

13. Defendants agrees to pay \$10,000.00 in investigation fees and an additional \$10,000.00 in civil penalties to the "Office of the Attorney General" of the State of Kansas, pursuant to K.S.A. §50-623 *et seq.* Said payment shall be a judgment for the Plaintiff.

### GENERAL PROVISIONS

14. Defendant agrees to resolve any future complaints filed with the Office of the Attorney General regarding Defendant after the date of this Consent Judgment to the satisfaction of

the Attorney General within 30 days of the date such complaint is forwarded to Defendant for resolution.

15. Defendant agrees to be bound by this Journal Entry of Consent Judgment at all times after the date of entry without regard to whether Defendant acts through its principals, officers, directors, shareholders, representatives, agents, servants, employees, subsidiaries, successors, assigns or whether acting through any corporation or other entity whose acts, practices or policies are directed, formulated, or controlled by Defendant.

16. Defendant agrees to make available and/or disclose the provisions of this Consent Judgment to its employees, agents and representatives not later than twenty (20) days after the date of this Consent Judgment.

17. Defendant agrees not to enter into, form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose and/or with the effect of avoiding compliance with the terms of this Consent Judgment.

18. Defendant agrees to refrain from and to be permanently enjoined from representing, in any manner whatsoever and to any person or entity whatsoever, that this Consent Judgment constitutes approval by, endorsement by or authority from the State of Kansas and/or the Attorney General of the State of Kansas for the business practices of Defendant. Defendant agrees that making of any such representation, after the date of this Consent Judgment, shall constitute a violation of this Journal Entry.

19. 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.

20. If any portion, provision or part of this Consent Judgment is held to be invalid, unenforceable, or void for any reasons whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions, provisions, or parts.

21. Compliance with this Consent Judgment does not relieve 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 her jurisdiction.

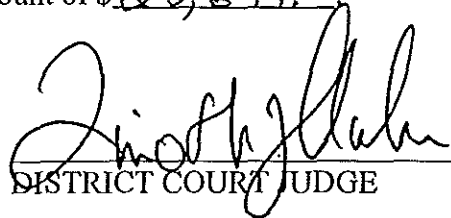
**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Defendant Melvin H. Claphan is responsible for one half (½) of the mediation cost, in the amount of \$ 250<sup>00</sup>.

**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 the Court.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that pursuant to the Kansas Consumer Protection Act, the Court hereby approves the terms of the Consent Judgment and adopts the same as the order of the Court.

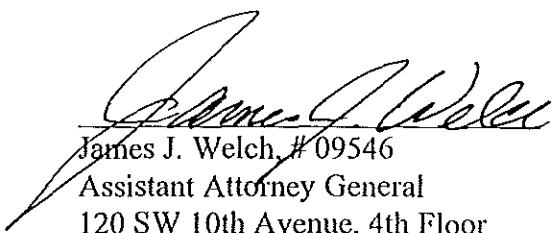
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant Melvin H. Claphan, in the amount of \$ 25,648<sup>00</sup>.

**IT IS SO ORDERED.**

  
DISTRICT COURT JUDGE

Approved by:

\_\_\_\_\_  
CARLA J. STOVALL, #11433  
Attorney General

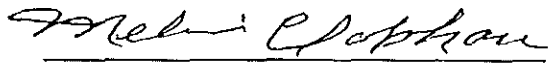
  
James J. Welch, # 09546  
Assistant Attorney General  
120 SW 10th Avenue, 4th Floor  
Topeka, Kansas 66612-1597  
(785) 296-3751

Attorney for Plaintiff

\_\_\_\_\_  
Michael C. Robinson, #15589  
129 West Second, Suite 200  
PO Box 1868  
Hutchinson, Kansas 67504-1868

Attorney for Defendant

I acknowledge that violations of the injunctions in this judgment may subject me to indirect civil contempt proceedings which may include incarceration.

  
\_\_\_\_\_  
Melvin H. Claphan  
Defendant