

C-07-000093  
E-07-000033

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**FILED**

**IN THE DISTRICT COURT OF BARTON COUNTY, KANSAS  
THE HONORABLE MIKE KEELEY  
CIVIL DIVISION**

2008 OCT 29 P 3:31

BARTON COUNTY, KS  
CLERK OF THE DISTRICT COURT

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**STATE OF KANSAS, *ex rel.*  
STEVE SIX, Attorney General**

**Plaintiff**

**Case No. 2007-CV-179**

**v.**

**EARL SIMMONS, an Individual,  
d/b/a ESCO,  
d/b/a EARL SIMMONS CO.,**

**Defendant.**

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

**JOURNAL ENTRY**

**COMES NOW** on this 28 day of October, 2008, on Plaintiff's Motion for Default Judgment. A hearing was held on Plaintiff's Motion for Default Judgment at 11:00 a.m. (CST) at the Barton County Courthouse, Room 306, 1400 Main Street, Great Bend, Kansas. The State of Kansas, *ex rel.* Steve Six, appeared by telephone through Assistant Attorney General, Lee Everett Urban. Defendant Earl Simmons did not appear.

**WHEREUPON**, based on the pleadings and Plaintiff's argument at the hearing, the Court finds the following:

- (1) Plaintiff filed a Motion for Default Judgment and Memorandum in Support.
- (2) Defendant failed to respond and did not appear at the hearing on said motion.
- (3) A copy of the summons and a copy of the Petition was personally served upon Defendant in the Barton County Jail on June 4, 2008
- (4) Defendant failed to file an Answer within twenty (20) days after being served with

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process, as required by K.S.A. 60-212(a).

- (5) More than thirty (30) days have elapsed since Defendant was served with a copy of the summons and a copy of the Petition and Defendant has failed to file an Answer.
- (6) Pursuant to K.S.A. 60-255, Defendant is in Default.
- (7) The legal arguments and authorities set forth in Plaintiff's Motion and Memorandum of Default Judgment are adopted as the Court's conclusions of law as though fully set forth herein.

**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that Plaintiff's Motion for Default Judgment is hereby **GRANTED**. Judgment is hereby entered in favor of Plaintiff against Defendant on all counts in the Petition.

**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that the alleged violations of the Kansas Consumer Protection Act are declared to be deceptive.

**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that Defendant and its employees and agents be permanently enjoined from these violating practices pursuant to K.S.A. 50-632(a)(2).

**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that Defendant pay a total of thirty thousand dollars (\$30,000.00) in civil penalties. The total amount of civil penalties is assessed as follows:

**COUNT 1: Deceptive Act or Practice**

\$2,500	Civil Penalties pursuant to K.S.A. 50-636(a)
\$7,500	Enhanced Civil Penalties pursuant to K.S.A. 50-677 (Finding that Mr. George Bergen, 77 years old, is an elder person under the Kansas Consumer Protection Act)

**COUNT 2: Unconscionable and/or Deceptive Act or Practice**

\$2,500	Civil Penalties pursuant to K.S.A. 50-636(a)
\$7,500	Enhanced Civil Penalties pursuant to K.S.A. 50-677 (Finding that Mr. George Bergen, 77 years old, is an elder person under the Kansas Consumer Protection Act)

**COUNT 3: Deceptive Act or Practice**

\$2,500	Civil Penalties pursuant to K.S.A. 50-636(a)
\$7,500	Enhanced Civil Penalties pursuant to K.S.A. 50-677 (Finding that Mr. George Bergen, 77 years old, is an elder person under the Kansas Consumer Protection Act)

**Total Penalties: \$30,000.00**

**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that Defendant pay Mr. George Bergen, a Kansas consumer, restitution in the amount of five thousand seven hundred dollars (\$5,700.00).

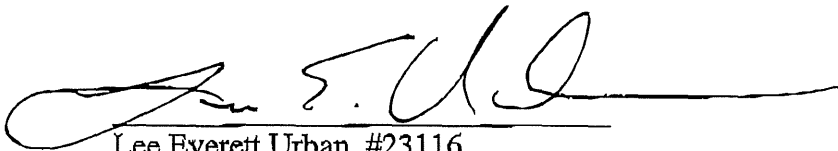
**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that Defendant pay all Court costs.

**IT IS SO ORDERED.**

  
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 The Honorable Mike Keeley  
 Chief Judge, Barton County District Court

Date: October 28, 2008

Submitted by:



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