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FILED
 LEAVENWORTH CO. KS
 2014 MAR 26 AM 8:14
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IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS
 DIVISION 4

STATE OF KANSAS, *ex rel.*,)
 Derek Schmidt, Attorney General,)
)
 Plaintiff,)
)
 v.)
)
 Carl Bailey)
 and Clifford Charlton and Franklin Charlton)
 and Mike Gaede and Robert Morris)
 all d/b/a Bailey's Construction)
 and/or d/b/a/ CTC Construction)
)
 Defendants)

Case No. 2012 CV 148

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

**JOURNAL ENTRY OF DEFAULT JUDGEMENT AGAINST CARL BAILEY and
 MIKE GAEDE d/b/a BAILEY'S CONTRUCTION AND CTC CONSTRUCTION**

COMES NOW before the Court, on this 25 day of March, 2014, the
 Plaintiff's Motion for Entry of Default Judgment against Carl Bailey d/b/a Bailey Construction,
 d/b/a CTC Construction and Mike Gaede d/b/a Bailey Construction, d/b/a CTC Construction,
 pursuant to K.S.A. 50-255 (a). Plaintiff State of Kansas, *ex rel.* Derek Schmidt, Attorney
 General appears by and through Assistant Attorney General Robert E. Hiatt. There are no other
 appearances. After reviewing the Court File and the Plaintiff's Motion for Entry of Default
 Judgment, the Court hereby enters judgment as follows:

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Derek Schmidt is the duly elected, qualified, and acting Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the laws of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623 (2005), *et seq* (*hereinafter referred to as the KCPA*).

3. Defendant Carl Bailey is an individual working for or operating an asphalt paving company under the name "Bailey's Construction" and/or "CTC Construction" all with an unknown principal place of business and a supplier as defined by K.S.A. 50-624 (l) (2013 Supp.).

4. Defendant Mike Gaede is an individual working for or operating an asphalt paving company under the name "Bailey's Construction" and/or "CTC Construction" all with an unknown principal place of business and a supplier as defined by K.S.A. 50-624 (l) (2013 Supp.).

5. Defendant Carl Bailey d/b/a Bailey construction and/or d/b/a CTC Construction was personally served with an Alias Summons and the First Amended Petition on June 07, 2013.

6. A Return of Service evidencing proper service of the Alias Summons and First Amended Petition upon Carl Bailey d/b/a Bailey Construction and/or d/b/a CTC Construction has been filed.

7. More than 30 days have elapsed since Carl Bailey d/b/a Bailey Construction and/or d/b/a CTC Construction was personally served with the Alias Summons and the First Amended Petition, and he has failed to Answer or otherwise Plead.

8. Plaintiff expended \$150.00 for a special process server who successfully served the Defendant, Carl Bailey d/b/a Bailey Construction and/or d/b/a CTC Construction, at 1811 Stadium Drive, Webb City, Missouri, 64870.

9. Defendant Mike Gaede d/b/a Bailey Construction and/or d/b/a CTC Construction was personally served with an Alias Summons and the First Amended Petition on September 18, 2013 by the Leavenworth County Sheriff.

10. A Return of Service evidencing proper service of the Alias Summons and First Amended Petition upon Mike Gaede d/b/a Construction and/or d/b/a CTC Construction has been filed.

11. More than 30 days have elapsed since Mike Gaede d/b/a Bailey Construction and/or d/b/a CTC Construction was personally served with the Alias Summons and the First Amended Petition, and he has failed to Answer or otherwise Plead.

12. The First Amended Petition, filed on or about April 23, 2013 and served on both Defendants, requests a liquidated amount of damages (\$17,500.00), a liquidated amount of penalties (\$50,000.00 for five violations of the Kansas Consumer Protection Act at \$10,000.00 each), and enhanced penalties (five enhancements at \$10,000.00 each due to the consumer being an elder and/or vulnerable person, as defined by K.S.A. 50-676 through K.S.A. 50-679 (2013 Supp.)) for a total liquidated sum of One Hundred Seventeen Thousand Dollars and No Cents (\$117,000.00).

13. This Court has subject matter jurisdiction over this case under the KCPA and Chapter 60 of the Kansas Statutes Annotated.

14. Defendants are subject to the jurisdiction of this Court under the Kansas Consumer

Protection Act, K.S.A. 50-638 (2005) and have submitted to jurisdiction in Kansas via the conduct of business within the state pursuant to KSA 60-608 (b) (1) (2013 Supp.).

15. Venue is proper in the First Judicial District of Kansas (Leavenworth County) under K.S.A. 50-638(b) (2005).

16. Defendants, individually and in concert and doing business under various names including but not limited to "Bailey's Construction" and/or "CTC Construction" solicited Kansas consumers for asphalt paving services at their residences.

17. On March 7, 2012, Defendants solicited Robert Barr (hereinafter "Barr") at his residence to perform asphalt paving services for him in Leavenworth County Kansas.

18. Barr is an "elder person" as defined in K.S.A. 50-676(a) (2013 Supp.) and a consumer as defined by K.S.A. 50-624 (2013 Supp.).

19. Barr agreed to the services, as he believed he was getting a good deal, because the Defendants told him they had "left over" asphalt material from a previous job and needed to get rid of it.

20. Defendants quoted a price to Barr of \$22.00 per square yard, did not fully measure the area to be paved, and did not give Barr a complete estimate before beginning to pave.

21. Before the paving was complete the Defendants demanded payment from Barr of \$1,750.00, and Barr agreed to pay the \$1,750.00. Barr could not write very well so he allowed the Defendants to write out a check on his account.

22. Barr was surprised to see that the Defendants wrote a check (#2174) for \$17,500.00 made out to Mike Gaede (See Attached Exhibit A). Barr did not question the amount and signed the check for the Defendants because there were so many of them, and he did not want to get into an argument with them.

23. Defendants presented Barr with an invoice (See Attached Exhibit B) which contained no business address, no notice of any right to cancel the transaction, and no Notice of Cancellation form, all in violation of K.S.A. 50-640(b) (1) & (2) (2005).

24. Defendants failed to inform Barr orally of his right to cancel the transaction as required by K.S.A. 50-640(b)(5) (2005).

25. Defendant Mike Gaede cashed the check at Barr's bank, National Bank & Trust in Atchison, Kansas before waiting five business days, in violation of K.S.A. 50-640(b)(8) (2005) (See attached Exhibit A).

26. Barr with the help of his nephew, Timothy Gates, contacted the Leavenworth County Sheriff's Department after the Defendants left his property.

27. Defendants were driving trucks with expired tags from other states and the Defendants were not in possession of a Transient Merchant License, required for traveling suppliers from out-of-state pursuant to K.S.A. 19-2235 (2007).

28. Defendants charged Barr \$17,500.00 for paving services when those same services were readily obtainable elsewhere for between \$2,305.15 and \$3,150.00 (See Attached Exhibits C & D).

29. Defendant's charges grossly exceeded the price at which similar or better paving products and services were readily obtainable in similar transactions by similar consumers in violation of K.S.A. 50-627(2) (2013 Supp.).

30. Defendants engaged in an unfair or deceptive act or practice by failing to state or concealing a material fact prohibited by K.S.A. 50-626(b) (3) (2013 Supp.).

31. Defendants engaged in an unfair or deceptive act or practice by failing to provide the written notice of the right to cancel required by K.S.A 50-640(b) (1) (2005), for which restitution to the consumers should be paid and for which civil penalties should be imposed.

32. Defendants engaged in an unfair or deceptive act or practice by failing to provide a written Notice Of Cancellation form required by K.S.A 50-640(b)(2) (2013 Supp.), for which restitution to the consumers should be paid and for which civil penalties should be imposed.

33. Defendants engaged in an unfair or deceptive act or practice by failing to orally inform consumers of their right to cancel required by K.S.A 50-640(b)(5) (2005).

34. Defendants engaged in an unfair or deceptive act or practice by negotiating, transferring, selling or assigning a note of indebtedness to a financial institution prior to midnight of the fifth business day following a transaction, as prohibited by K.S.A 50-640(b)(8)(2005).

35. Defendants engaged in an unconscionable act or practice by charging a price that grossly exceeded the price at which similar services were readily obtainable as prohibited by K.S.A. 50-627(b)(2) (2013 Supp.).

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that:

A. The Court finds that the acts and practices set out above in paragraphs 1 through 35 are hereby declared to be violations of the Kansas Consumer Protection Act, pursuant to K.S.A.50-632(a) (1) (2005).

B. Paragraphs 1 through 35 above are hereby made findings of fact and or conclusions of law by this Court.

C. The Defendants are restrained from all other acts or practices which violate the

KCPA and the Court revokes any authority the Defendants may have to engage in any business activity in the State of Kansas, pursuant to K.S.A. 50-632(a)(2), (c) (1), (c) (5), and (c) (6) (2005).

D. Defendants shall be permanently enjoined from entering into, forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship, or any other legal structures, in the State of Kansas, solely for the purpose of avoiding compliance with the terms of this Default Judgment.

E. Defendants committed five violations of the Kansas Consumer Protection Act. Therefore, the Court imposes a monetary penalty of Ten Thousand Dollars (\$10,000.00) per violation, for a total civil penalty award of Fifty Thousand Dollars (\$50,000.00) pursuant to K.S.A. 50-632 and/or 50-636 (2005).

F. Plaintiff is also awarded damages (restitution to the consumer(s)) in the amount of Seventeen Thousand Five Hundred Dollars and no cents (\$17,500.00).

G. Plaintiff is awarded enhanced civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for five violations totaling Fifty Thousand Dollars (\$50,000.00) because the violations were committed against an "elder person" in disregard of the rights of the protected consumer, pursuant to K.S.A. 50-676 through 50-679 (2013 Supp.).

H. Plaintiff is awarded costs of One Hundred and Fifty Dollars (\$150.00) for the fees of a special process server, pursuant to K.S.A. 50-632(a)(4) (2005). These costs are deemed reasonable investigative fees by the Court.

WHEREFORE, there being no just reason for delay, Final Judgment is hereby entered jointly and severally against both Defendants, Carl Bailey and Mike Gaede both d/b/a Bailey's

Construction and/or d/b/a CTC Construction in the total amount of One Hundred Seventeen
Thousand Six Hundred and Fifty Dollars and No Cents (\$117,650.00).

IT IS SO ORDERED



Hon. David King, District Court Judge

Prepared and approved by:

ATTORNEY FOR PLAINTIFF



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