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 KS. DISTRICT COURT
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

STATE OF KANSAS, *ex rel.*,)
 DEREK SCHMIDT, Attorney General,)
)
 Plaintiff,)

v.)

Case No. 2018-CV-78
 Division No. 7

CHERRY COOPER, an individual;)
 and)

HARRY COOPER, an individual;)
 DBA A.L. PAVING CONTRACTORS)
 and)
 PAVING CONTRACTORS)
 and)
 ASPHALT PAVING)
 and)
 JJ PAVING)
 and)

HARRY COOPER JR, an individual;)
 DBA A.L. PAVING CONTRACTORS)
 and)
 PAVING CONTRACTORS)
 and)
 ASPHALT PAVING)
 and)
 JJ PAVING)
 and)

ROBERT COOPER, an individual)
 DBA A.L. PAVING CONTRACTORS)
 and)
 PAVING CONTRACTORS)
 and)
 ASPHALT PAVING)
 and)
 JJ PAVING)

Defendants)

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

JUDGMENT NUNC PRO TUNC

NOW on this date, the parties' Journal Entry of Consent Judgment comes before the Court pursuant to K.S.A. § 50-632(b). The Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Attorney General, appears by and through Sarah M. Dietz, Assistant Attorney General. Defendants Harry Cooper, Harry Cooper, Jr., and Robert Cooper appear pro se.

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

PARTIES, JURISDICTION AND VENUE

1. Derek Schmidt is the duly elected, qualifying and acting Attorney General for 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 ("KCPA"), K.S.A. § 50-623 *et seq.*
3. Defendant Cherry Cooper is listed as the registrant of the associated USDOT: 2577656 required to operate certain asphalt and paving equipment which was seized pursuant to an order issued in this matter on January 26, 2018. Defendant Cherry Cooper was dismissed without prejudice from this action.
4. Defendant Harry Cooper Sr., dba A.L. Paving Contractors, Paving Contractors, Asphalt Paving, and JJ Paving, has a residential address of 18427 Shelley Carlile Dr, Spiro, Oklahoma 74959.
5. Defendant Harry Cooper JR, dba A.L. Paving Contractors, Paving Contractors, Asphalt Paving, and JJ Paving, has PO BOX 554, Spiro, Oklahoma 74959 listed on his Identification Card, which is linked to a residential address of 18421 174th St. Spiro, Oklahoma

74959. Defendant Harry Cooper Jr. is the purchaser and owner of the Skid Steer Loader, New Holland L160, PIN N6M434183.

6. The 2001 Kenworth Dump Truck, VIN 2NKMLD9X21M864079, license plate is registered to a Harry T. Cooper. Harry Cooper Sr. is the owner of the Dump Truck.

7. Defendant Robert Cooper, dba A.L. Paving Contractors, Paving Contractors, Asphalt Paving, and JJ Paving has a residential address at 18421 174th Ave, Spiro, Oklahoma 74959. Defendant Robert Cooper is the purchaser and owner of the 2015 H&H Flatbed trailer, VIN 533HD3524FC239168; however, the license plate on the Flatbed trailer at the time it was seized does not match the trailer description.

8. Harry Cooper Sr. purchased and owns the Asphalt Paving Machine, PIN YZ0818208.

9. "Settling Defendants" refers to Defendants Harry Cooper, Harry Cooper JR., and Robert Cooper collectively throughout the Judgment.

10. Defendants principal place of business is PO Box 554, Spiro, OK 769589.

11. Jurisdiction and venue are appropriate in District Court of Shawnee County, Kansas, pursuant to K.S.A. § 50-638(a) and (b), respectively.

ALLEGATIONS

12. Settling Defendants have acted as "suppliers" in Kansas, as that term is defined by K.S.A. § 50-624(l).

13. Settling Defendants have engaged in "consumer transactions" in Kansas, as that term is defined by K.S.A. § 50-624(c).

14. Plaintiff alleges that at all times relevant hereto, the Settling Defendants engaged in

acts and practices in violation of the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*, which acts and practices include, but are not limited to:

- a. The Settling Defendants conducted door-to-door sales in the State of Kansas and failed to provide consumers with a written notice of their three-day right to cancel.
- b. The Settling Defendants negotiated evidence of indebtedness prior to midnight of the fifth business day following the consumer transaction.
- c. The Settling Defendants made, or caused to be made, consumer transactions in which the consumers were unable to receive a material benefit from the subject of the transaction.
- d. The Settling Defendants induced consumers to enter into excessively one-sided consumer transactions in favor of the supplier.

15. The parties voluntarily agree to this Consent Judgment without trial or adjudication of any issue of fact or law as a compromise settlement of all issues raised herein. It is further understood that compliance with this judgment is not an admission of guilt by Respondent.

INJUNCTIVE RELIEF

16. The Settling Defendants agree to comply with all Kansas laws, statutes, rules and regulations relating to consumer transactions in Kansas, specifically, but not limited to, the Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*

17. The Settling Defendants agree to refrain, and to be permanently enjoined, from conducting consumer transactions in the State of Kansas.

18. The Settling Defendants agree to refrain, and to be permanently enjoined, from conducting door-to-door transactions in the State of Kansas.

19. The Settling Defendants shall not cause or encourage third parties, nor knowingly

permit third parties acting on their behalf, to engage in practices from which Settling Defendants are prohibited by this Consent Judgment.

20. The Settling Defendants shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices which are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent the spirit or purposes of this Consent Judgment.

21. The Settling Defendants agree that the terms of this Consent Judgment apply to acts performed individually, in concert, or by or through its employees, agents, representatives, affiliates, assignees and successors.

MONETARY RELIEF

22. The Settling Defendants are jointly and severally liable for and agree to pay consumer restitution in the amount of \$41,430.00 in the form of a cashier's check, money order or other certified funds payable to The Office of the Kansas Attorney General, to be dispersed to affected consumers named in the petition, mailed to:

Sarah M. Dietz, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

23. The Settling Defendants are jointly and severally liable for and agree to pay the Office of the Kansas Attorney General \$20,000.00 in investigative fees and expenses, pursuant to K.S.A. § 50-636, in a second and separate payment in the form of a cashier's check, money order or other certified funds payable to the Office of the Kansas Attorney General, mailed to:

Sarah M. Dietz, Assistant Attorney General
Office of the Kansas Attorney General
120 SW 10th Ave., 2nd Floor
Topeka, Kansas 66612

24. Plaintiff shall retain the sequestered equipment and sell it to reduce the total restitution and investigative fees and expenses owed by Settling Defendants. The amount of restitution and investigative fees and expenses owed will be reduced by the proceeds of the sale of the sequestered equipment minus costs of the sale. Plaintiff shall provide Settling Defendants with an accounting of the sold equipment along with the balance of consumer restitution and investigative fees and expenses still owed. Plaintiff will sell the sequestered equipment through regular state channels and makes no guarantee regarding value or return on the sale of said equipment. Settling Defendants shall remain jointly and severally liable for the outstanding balance of consumer restitution and investigative fees and expenses once the equipment has sold.

25. Payment of the remaining consumer restitution and investigative fees and expenses shall be made within one hundred and eighty (180) days of Plaintiff providing Settling Defendants with documentation of the sale of the equipment.

SUSPENDED MONETARY JUDGMENT

26. Judgment is hereby entered in favor of plaintiff and against Settling Defendants in the amount of \$700,000 for the payment of civil penalties for violations of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-636. *Provided, however*, this monetary judgment shall be suspended against Settling Defendants as long as the Court makes no finding(s), as provided in the following section of this Consent Judgment titled "right to Reopen," that Settling Defendants have violated any provision of this Consent Judgment.

RIGHT TO REOPEN

27. Plaintiff's agreement to Suspended Monetary Judgment contained in this Consent Judgment is expressly premised upon Settling Defendants' material compliance with the terms of this Consent Judgment.

28. Settling Defendants' "material compliance" with the terms of this Consent Judgment shall mean material compliance with all of the provisions included in Paragraphs 16-41.

29. If, upon motion by the Attorney General to the Court, the Court finds that the Settling Defendants have violated a material term of this Consent Judgment, the suspension of the monetary judgment as to the Settling Defendants will be terminated and the entire judgment amount of \$700,000 shall become immediately due and payable to the Plaintiff, and interest computed at the rate prescribed under Kansas law, shall begin immediately to accrue on the unpaid balance.

30. Settling Defendants agree that pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7), and due to the nature of the conduct underlying this settlement, any unpaid penalties and/or fees shall not be dischargeable in any bankruptcy proceeding commenced after the entry of this Consent Judgment.

31. Proceedings instituted under the foregoing paragraphs are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings Plaintiff may initiate to enforce this Consent Judgment.

NOTICE OF CRIMINAL LIABILITY

32. Settling Defendants acknowledge that within the terms of this Judgment, Settling Defendants have been put on notice that as of the date of this Judgment, each Settling Defendant is subject to criminal liability if that Settling Defendant engages in any door-to-door sale that would violate this Judgment.

33. Pursuant to this Judgment, the Attorney General, or the County or District Attorney, or both, may institute a criminal action to prosecute Settling Defendants if Settling Defendants participate, directly or indirectly, in the door-to-door conduct prohibited in this Judgment, or if

Settling Defendants cause, direct, employ, enable or assist others in participating in such conduct.

34. Any criminal action brought pursuant to K.S.A. 21-6423 is a Level 9, Person Felony.

OTHER PROVISIONS

35. 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.

36. 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.

37. Compliance with this Consent Judgment does not relieve Settling Defendants of any obligation imposed by applicable federal, state, or local law, nor shall this Consent Judgment preclude the Plaintiff from taking appropriate legal action to enforce any other statutes under his jurisdiction or from any other Federal or State agency to enforce any other federal, state, or local law under its jurisdiction.

38. The parties understand that this Consent Judgment shall not be construed as an approval of or sanction by the attorney general of the Settling Defendants' business practices, nor shall the Settling Defendants represent the Consent Judgment as such approval. The parties further understand and agree 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 this Consent Judgment shall not be construed to be an approval of or sanction of any representations, acts, or practices of the

Settling Defendants, nor shall any inaction by the Attorney General be considered a waiver by the attorney general of any rights under this Consent Judgment or applicable law.

39. This Consent Judgment represents the entire agreement between Plaintiff and the Settling Defendants, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Consent Judgment which are not fully expressed herein or attached hereto.

40. Settling Defendants hereby represent and warrant that Settling Defendants have had the opportunity to consult with and receive the advice of legal counsel regarding all matters relative to this Consent Judgment, including the rights and obligations of Settling Defendants under this Consent Judgment and the consequences of breach hereunder. Settling Defendants represent that each Settling Defendant has read the Consent Judgment and knows and understands the contents thereof. Settling Defendants further represent and warrant that Settling Defendants are signing this Consent Judgment as the result of his own free act, and that Settling Defendants have not relied on any statement(s) or representation(s) of the Attorney General or anyone acting on his behalf, except for those contained in this Consent Judgment.

41. By signing this Consent Judgment, the representative of Settling Defendants represent and warrant that such person is duly and legally authorized to execute this Consent Judgment on behalf of this Settling Defendants, thus binding the Settling Defendants to the provisions of this Consent Judgment.

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

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Settling Defendants be permanently enjoined from engaging in consumer transactions in the State of Kansas.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Settling Defendants be permanently enjoined from engaging in door-to-door transactions in the State of Kansas.

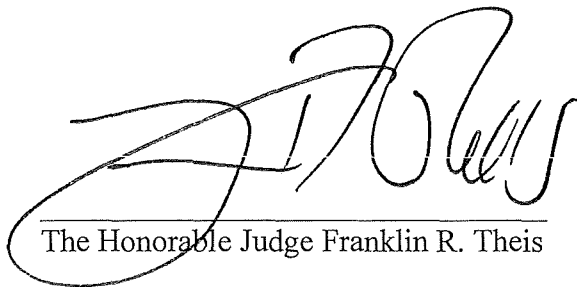
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is entered against the Settling Defendants in favor of Plaintiff in the amount of \$61,430.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment in the amount of \$700,000 against the Settling Defendants is suspended pursuant to the terms of this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to the Kansas Consumer Protection Act, 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.

Date 7/20/2018


The Honorable Judge Franklin R. Theis

Respectfully submitted,

/s/ Sarah M. Dietz

Sarah M. Dietz, #27457
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
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sarah.dietz@ag.ks.gov

Defendants' Original Signatures from Consent Judgment

Approved by:

Harry Cooper SR
Harry Cooper, an individual
dba A.L. Paving Contractors, dba Paving Contractors, dba Asphalt Paving, dba JJ Paving

Harry Cooper Jr
Harry Cooper Jr., an individual
dba A.L. Paving Contractors, dba Paving Contractors, dba Asphalt Paving, dba JJ Paving

Robert Cooper
Robert Cooper, an individual
dba A.L. Paving Contractors, dba Paving Contractors, dba Asphalt Paving, dba JJ Paving