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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6**

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

Plaintiff,)

v.)

Case No. 12-C-001101

Morris E. Herrin, Jr., Forrest Dewayne Jackson,)
Louis Holder Raymond, Robert Wayne Williams,)
Floyd Jerry Robert, and Scott Alan Gilmer,)
D.B.A. Allied Paving & Construction)

Defendants)

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

**JOURNAL ENTRY OF DEFAULT JUDGMENT
AGAINST SCOTT ALAN GILMER**

NOW on this ___ day of _____, _____, the Plaintiff's Motion for Default Judgment against Scott Alan Gilmer pursuant to K.S.A. 50-255 (a) is heard. The 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 Default Judgment against Scott Alan Gilmer (hereinafter referred to as "Defendant") pursuant to K.S.A. 50-255 (a), and hearing the arguments of counsel, the Court hereby enters judgment as follows:

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Derek Schmidt is the duly elected Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action and is derived from the statutory law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*
3. Scott Alan Gilmer was personally served in Shawnee County Kansas on October 11, 2012 and a return of service filed on October 18, 2012.
4. Defendant is a supplier as defined by K.S.A. 50-624(j).
5. The Court has subject matter jurisdiction over this case under the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq* and the Kansas Code of Civil Procedure K.S.A. 60-601 *et seq.*
6. The Defendant has failed to plead or otherwise defend and therefore is in default pursuant to K.S.A. 60-255(a).
7. Venue is properly in the third Judicial District of Kansas (Shawnee County) under K.S.A. 50-638(b).
8. Defendant individually or in concert with others solicited Kansas consumers for various home improvement services including but not limited to the installation, sealing, and repair of asphalt driveways at Kansas residences in Shawnee and Wabaunsee County. Some or all of these transactions involved "elder persons" as defined in K.S.A. 50-676(a). The following

Kansans are persons known to Plaintiff to have entered into consumer transactions with the Defendant:

a) Robert J. Lindsay, 12608 K-4 Highway, Maple, Hill, Kansas

Amount: \$9,000.00.

9. Defendant did not present consumers with a "Release – Agreement and Agreed Contract/Invoice." Consumers were not provided with a notice of any right to cancel the transaction nor a Notice Of Cancellation form, as required by K.S.A. 50-640(b)(1) & (2).

10. Defendant failed to inform consumers, orally, of their right to cancel the transaction at the time of purchase, as required by K.S.A. 50-640(b) (5) and used deceptive and/or unconscionable practices in transacting business with consumers in Kansas.

11. Defendant was involved with the cashing of checks received from consumers at the respective local banks without waiting five (5) business days, in violation of K.S.A. 50-640(b)(8).

12. Defendant failed to disclose certain material facts to consumers prior to entering into the transactions, including but not limited to the total price that would be charged and the method and timing of payment for the services, all in violation of K.S.A. 50-626(b)(3).

13. The Defendant committed four violations of the Kansas Consumer Protection Act and that Plaintiff has shown that he is entitled to a default judgment against the defendant.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED as follows:

14. The Defendant committed four violations of the Kansas Consumer Protection Act therefore the Court imposes a monetary penalty of Ten Thousand dollars (\$10,000) per violation,

for a total penalty award of Forty Thousand Dollars (\$40,000) pursuant to K.S.A. 50-632 and/or 50-636.

15. The Plaintiff is also entitled to an award of investigative costs and or investigative fees, pursuant to K.S.A. 50-632.

17. The Court finds that an award of thirty-five thousand dollars (\$35,000.00) for investigative costs and/or investigative fees is just, fair, and reasonable.

16. There being no just reason for delay a Final Default Judgment, pursuant to K.S.A. 60-255(a), is hereby entered against Scott Alan Gilmer in the total amount of Seventy Five Thousand Dollars and no cents (\$75,000.00).

14. Paragraphs one through sixteen above are hereby made findings of fact and conclusions of law by this Court.

IT IS SO ORDERED

District Court Judge

Prepared and approved by:

ATTORNEY FOR PLAINTIFF



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