

James J. Welch, #09546  
Assistant Attorneys General  
Office of the Attorney General  
120 West Tenth Street  
Topeka, Kansas 66612-1597  
(785) 296-3751

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KS. DISTRICT COURT  
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ALL JURISDICTION  
TOPEKA, KANSAS

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division 6

STATE OF KANSAS, *ex rel.*  
CARLA J. STOVALL, Attorney General,

Plaintiff,

vs.

VALLEY NATHAN HERRIN,  
d/b/a HERRIN CONSTRUCTION,

Defendant.

Case No. 00C 1457

Pursuant to K.S.A. Chapter 60

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 6<sup>th</sup> day of <sup>November</sup> ~~October~~, 2000, comes before the Court the Journal Entry of Consent Judgment entered into between the parties, pursuant to K.S.A. 50-632(b). Plaintiff, State of Kansas, *ex rel.* Carla J. Stovall, Attorney General, appears by and through James J. Welch, Assistant Attorney General. Defendant Valley Nathan Herrin, d/b/a Herrin Construction, appears *pro se*.

**WHEREUPON**, the parties advise the Court they have stipulated and agree to the following matters:

1. Carla J. Stovall is the Attorney General of the State of Kansas.

2. The Attorney General's authority to bring this action is derived from statutory and common law of Kansas, specifically, the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*

3. Defendant Valley Nathan Herrin, d/b/a Herrin Construction, is a supplier within the definition of the Kansas Consumer Protection Act, K.S.A. §50-624(i) and has engaged in consumer transactions, as defined by K.S.A. 50-624(c).

4. Defendant Valley Nathan Herrin, d/b/a Herrin Construction, may be served with process at 4560 Cardinal, Edmond, Oklahoma, or wherever in Kansas he may be found.

5. Between at least October 11, 2000 and October 19, 2000, Defendant solicited and sold asphalt paving services to consumers in Shawnee County, Topeka, Kansas, at places other than the usual place of business of Defendants, and for a purchase price of \$25.00 or more.

6. The Attorney General alleges Defendant engaged in the following acts and practices which are deceptive and violate the Kansas Consumer Protection Act:

a. In all of the above described solicitations, the defendant failed to provide to the Kansas consumers the written notice of cancellation required by K.S.A. 50-640(b)(2).

The failure to provide the required notice constitutes a deceptive act in violation of K.S.A. 50-626 as enumerated in K.S.A. 50-640(b).

b. In the above-described solicitations, the defendant failed to inform Kansas consumers orally of their rights to cancellation, as required by K.S.A. 50-640(b)(5). The failure to provide the required oral notice constitutes a deceptive act in violation of K.S.A. 50-626 as enumerated in K.S.A. 50-640(b).

c. Defendant made solicitations and sales to Kansas consumers in the county of Shawnee, leading such consumers to believe that Defendant has a transient merchant's license in the county of Shawnee, Kansas; when, in fact, Defendant has no such

license. Defendant's representation by implication that Defendant had obtained transient merchants' licenses is in violation of K.S.A. 50-626(b)(1)(B), in that it is the representation that Defendant has a sponsorship, approval, status, affiliation and connection that the Defendant did not have - specifically, approval by the county of Shawnee, Kansas, to make transient sales.

d. Defendant willfully failed to state and willfully concealed, suppressed, and omitted the material fact that Defendant was conducting business in Shawnee County without a transient merchants license, in violation of K.S.A. 50-626(b)(3).

e. Defendant cashed checks and/or disposed of monies given to Defendant by consumers as payment for services immediately upon receipt thereof. This is in violation of K.S.A. §50-640(b)(8), which provides that a note or other evidence of indebtedness incurred as a result of a door-to-door sales may not be negotiated, transferred, sold or assigned prior to midnight of the fifth business day following the day the contract was signed or the services were purchased.

f. Defendant has made solicitations and sales described above to at least one consumer who is an elderly person (60 years of age or older), as defined by K.S.A. §50-676(a). Defendant made solicitations and sales, as described above, in violation of the Kansas Consumer Protection Act, to elderly consumers in violation of K.S.A. §50-676, *et seq.*

7. Defendant agrees to this Consent Judgment without trial or adjudication of any issue of fact or law.

8. Defendant agrees to refrain from and to be permanently enjoined from engaging in acts and practices described in paragraph six (6) in violation of the Kansas Consumer Protection Act.

Defendant agrees that engaging in acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Order.

9. The provisions of this Consent Judgment will be applicable to Defendant, and every employee, agent or representative of Defendant.

10. 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 thirty (30) days of the date such complaint is forwarded to Defendant for resolution.

11. 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.

12. Defendant agrees to be permanently enjoined from any collection activity of any kind on checks written to them by Kansas consumers with whom Defendant has entered into consumer transactions prior to the signing of this Consent Judgment, and Defendant agrees to be enjoined from filing liens on any real estate in Kansas.

13. Defendant agrees to pay \$3,000.00, pursuant to K.S.A. §50-632, to the Office of the Attorney General of the State of Kansas. Payments shall commence on the date of the entry of this Consent Judgment in the amount of \$500.00, and shall continue at the rate of \$500.00 per month on the fifteenth (15<sup>th</sup>) day of every month thereafter until full amount is satisfied.

14. Parties agree that payment of investigation fees and expenses and civil penalties, as set out in paragraph thirteen (13) of this Consent Judgment shall not be subject to interest as long as all payments are timely made. Defendant agrees that failure to make timely payments of investigative fees and expenses and civil penalties, as set out in paragraph thirteen (13) of this

Consent Judgment, will result in the amount of the entire unpaid balance becoming due within five (5) days of the first payment missed and subject to interest, as provided in K.S.A. §16-204.

15. Defendant agrees to pay all expenses and reasonable attorney's fees in connection with the collection of any amounts in this judgment, provided Defendant does not pay the amounts as agreed herein within the time frame stated.

16. 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.

17. 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.

18. 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.

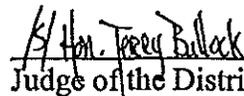
25. The parties understand this Consent Judgment shall not be construed as an approval of or sanction by the Attorney General of the business practices of Defendant nor shall Defendant represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval of or sanction of any representations, acts or practices indicated by such information, nor shall it preclude action thereon at a later date.

**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 fact and conclusions of law of the Court and any monies owed hereunder by Defendants immediately become a judgment upon filing.

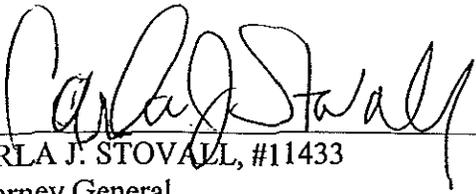
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment is entered against Defendant in favor of Plaintiff in the amount of \$3,000.00.

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

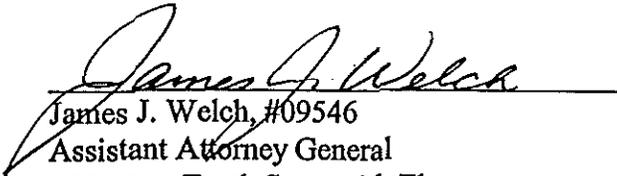
**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Judge of the District Court

**PREPARED AND APPROVED BY:**



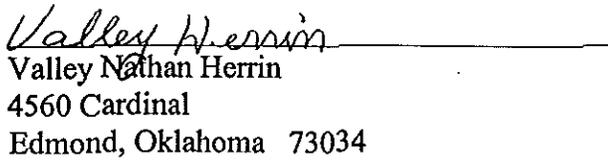
CARLA J. STOVALL, #11433  
Attorney General



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

Attorney for Plaintiff

**APPROVED BY:**



Valley Nathan Herrin  
4560 Cardinal  
Edmond, Oklahoma 73034

Defendant