	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION File No. 13CVS7243
STATE OF NORTH CAROLINA, ex rel. ROY COOPER, Attorney General,	)
Plaintiff,	) )
v.  ROBERT ALLEN MCELREATH, d/b/a BUILD-A-BANDIT, PONTIAC PROS, COMMON MAN CLASSIC HOT RODS, and DISCOUNT AUTOMOTIVE CLASSIC RESTORATIONS,	JUDGMENT BY DEFAULT ) ) ) ) ) ) ) ) ) ) )

## PURSUANT TO RULE 55 OF THE NORTH CAROLINA RULES OF CIVIL

)

**PROCEDURE**, the undersigned Judge presiding over the February 3, 2014, civil session of Wake County Superior Court grants Plaintiff State of North Carolina's, *ex rel*. Roy Cooper, Attorney General, Motion for Judgment by Default against Defendant Robert Allen McElreath, d/b/a Build-A-Bandit, Pontiac Pros, Common Man Classic Hot Rods, and Discount Automotive Classic Restorations. From the record herein, the Court finds as follows:

1. The Court has jurisdiction over the parties and subject matter.

Defendant.

- 2. On May 24, 2013, the State filed its Complaint in this action alleging that Defendant was operating businesses in violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq*.
- 3. On May 30, 2013, pursuant to N.C. Gen. Stat. § 75-14 and N.C. Rule of Civil Procedure 65, Superior Court Judge Howard Manning granted the State's Motion for a Temporary Restraining Order against Defendant enjoining Defendant from, *inter alia*, offering or providing automobile restoration services.

- 4. On July 15, 2013, pursuant to N.C. Gen. Stat. § 75-14 and N.C. Rule of Civil Procedure 65, Superior Court Judge W. Osmond Smith granted the State's Motion for a Preliminary Injunction Order against Defendant enjoining Defendant from, *inter alia*, offering or providing automobile restoration services.
- 5. On August 6, 2013, pursuant to N.C. Gen. Stat. § 75-14 and N.C. Rule of Civil Procedure 55(a), Assistant Wake County Clerk of Court P. Reese granted the State's Motion for Entry of Default against Defendant.
- 6. Defendant has failed to file an answer to the Complaint filed on May 24, 2013, and, thus, all of the allegations made by the State in the Complaint are deemed admitted.
- 7. From the record in this case, the State has made a sufficient showing that Defendant knowingly violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, et seq.
- 8. Defendant has failed to plead or to appear in this action, and is subject to a Judgment by Default as provided by N.C. Rule of Civil Procedure 55(b)(2).
- 9. On October 23, 2013, the State filed a Motion for Judgment by Default with this Court, moving that this Judgment by Default be granted, pursuant to Rule 55(b)(2) of the North Carolina Rules of Civil Procedure.
  - 10. Defendant is not an infant, or incompetent person, or otherwise under a disability.
- 11. Defendant is liable to the State for the relief requested by reason of the facts shown in the Complaint filed in this action.

BASED ON THE FOREGOING AND THE RECORD HEREIN, this Court concludes that good and sufficient cause exists for entry of this Judgment by Default, pursuant to N.C. Gen. Stat. § 75-1, et seq. and N.C. Rule of Civil Procedure 55(b).

IT IS THEREFORE ORDERED that Defendant and/or his businesses, their agents, employees, and corporate successors or assigns, and any persons acting in concert with them are hereby permanently enjoined from:

- (a) Advertising, offering, or entering into contracts to provide automotive products or perform automotive services in North Carolina;
- (b) Soliciting or accepting deposits or payments from consumers for any automotive product or service;
- (c) Collecting any further payment, directly or indirectly, from consumers for any automotive product or service;
- (d) Destroying, transferring, concealing, altering, or removing from their possession or control any financial records, customer contracts, emails, or other correspondence, business records, and other relevant documents related to the aforementioned business; or
- (e) Transferring, withdrawing, concealing, or encumbering any assets of Defendant and/or his businesses, their agents, employees, and corporate successors or assigns, and any persons acting in concert with them, pending further order of the Court.

IT IS FURTHER ORDERED that Plaintiff State of North Carolina, pursuant to N.C. Gen. Stat. § 75-15.1, et seq., shall have and recover from Defendant the following:

- (f) Consumer restitution in the amount of \$840,293 (See Attachment A);
- (g) Restoration of all consumer property held by Defendant and/or his businesses; and
- (h) Cancellation of all consumer contracts made by Defendant and/or his businesses.

IT IS FURTHER ORDERED that Plaintiff State of North Carolina, pursuant to N.C. Gen. Stat. § 75-8 and § 75-15.2, shall have and recover from Defendant a civil penalty of five thousand dollars (\$5,000) for each violation of the Unfair and Deceptive Trade Practices Act, and

that each week that the practices persisted be deemed a separate violation, in the amount of \$28,035,000 (See Attachment B).

SO ORDERED, this the 4th day of February, 2014.

Robert H. Hobyook
SUPERIOR COURT JUDGE

## Attachment A (Restitution)

Victim Last	Victim First	Restitution
Anzelmo	Thomas	\$14,500
Bishop	Charles	\$14,100
Brantley	Woodie	\$15,300
Bridges	Robert	\$14,400
Cagle	Don	\$11,600
Callahan	James	\$14,858
Cater	William	\$11,950
Chapman	Paul	\$19,000
Ciminø	Thomas	\$16,900
Cooper	Thomas	\$13,900
Creamer	Michael	\$11,000
Daeninck	Lawrence	\$13,050
Draggoo	Todd	\$12,700
Errigo	Vincent	\$16,125
Fender	Don	\$14,000
Foster	Travis	\$9,500
-Fuhr	Jay	\$9,400
Godar	Joe	\$15,250
Greenstein	Vincent	\$14,700
Haley	Tanner	\$15,900
Huber	Frederick	\$17,000
Huston	John	\$14,500
Janke	Anthony	\$15,000
Krause	John	\$12,500
Kujawa	Ronald	\$8,200
Lagan	Jason	\$17,900
Lawton	Bruce	\$14,900
Lundgren	Mark	\$14,250
Macik	Michael	\$16,000
McKenzie	Jerry	\$6,700
Meade	David	\$13,900
Metallinos	Constantine	\$21,500
Morello	Salvatore	\$11,100
Mount	Dickie	\$12,700
Muend	Sabina	\$12,000
Murphy	Michael	\$14,900
Nowak	John	\$14,000
Ostrowski	Richard	\$17,500

Ovesen	Joar	\$11,000
Pangert	Benjamin	\$19,100
Payne	George 💸 🙀	\$9,465
Petty	Todd	\$14,000
Polo	Michael	\$12,400
Rankin	Thomas	\$15,400
Rougeau	Carl	\$16,500
Scantling	Charles	\$17,675
Smith	Mark	\$12,000
Smith	William	\$21,100
Sutfin	Brooke	\$14,900
Swenson	Karen	\$14,900
Thompson	Edward	\$15,000
Tillwach	Paul	\$13,900
Treadwell	Jeff	\$14,200
True	Lloyd	\$16,900
Ventzke	Craig	\$17,500
Vicars	Mark	\$12,200
Warga	David	\$12,790
Wilmot	Daniel	\$13,500
Wilson	Anthony	\$13,180
		\$840,293

## Attachment B (Civil Penalty)

Victim Last	Victim First	Contract Date Entry	of Default V	Veeks	\$5,000 per week
Anzelmo	Thomas	2/7/2011	8/6/2013	130	-\$650,000
Bishop	Charles	8/12/2012	8/6/2013	51	\$255,000
Brantley	Woodie	4/11/2012	8/6/2013	68	\$340,000
Bridges	Robert	2/22/2012	8/6/2013	75	\$375,000
Cagle 4	Don	12/27/2010	8/6/2013	136	\$680,000
Callahan	James	7/17/2009	8/6/2013	211	\$1,055,000
Cater	William	7/6/2012	8/6/2013	56	\$280,000
Chapman	Paul	12/14/2012	8/6/2013	33	\$165,000
Cimino	Thomas	12/22/2010	8/6/2013	136	\$680,000
Cooper	Thomas	5/18/2011	8/6/2013	115	\$575,000
Creamer	Michael	6/19/2012	8/6/2013	59	\$295,000
Daeninck	Lawrence	10/1/2012	8/6/2013	44	\$220,000
Draggoo	Todd	10/15/2010	8/6/2013	146	\$730,000
Errigo	Vincent	12/23/2011	8/6/2013	84	\$420,000
Fender	Don	6/4/2012	8/6/2013	61	\$305,000
Foster	Travis	12/20/2012	8/6/2013	32	\$160,000
Fuhr	Jay	10/12/2012	8/6/2013	42	\$ <b>2</b> 10,000
Godar	Joe	8/15/2011	8/6/2013	103	\$515,000
Greenstein	Vincent	11/10/2011	8/6/2013	90	\$450,000
Haley	Tanner	5/5/2011	8/6/2013	117	\$585,000
Huber	Frederick	4/24/2012	8/6/2013	67	\$335,000
Huston	John	12/12/2012	8/6/2013	33	\$165,000
Janke	Anthony	12/28/2011	8/6/2013	83	\$415,000
Krause	John	6/8/2010	8/6/2013	165	\$825,000
Kujawa	Ronald	6/3/2012	8/6/2013	61	\$305,000
Lagan	Jason	2/22/2012	8/6/2013	75	\$375,000
Lawton	Bruce	11/26/2009	8/6/2013	192	\$960,000
Lundgren	Mark	3/16/2011	8/6/2013	124	\$620,000
Macik	Michael	4/25/2012	8/6/2013	66	\$330,000
McKenzie	Jerry	11/21/2011	8/6/2013	89	\$445,000
Meade	David	10/19/2011	8/6/2013	93	\$465,000
Metallinos	Constantine	6/3/2011	8/6/2013	113	\$565,000
Morello	Salvatore	9/28/2010	8/6/2013	149	\$745,000
Mount	Dickie	3/28/2012	8/6/2013	70	\$350,000
Muend	Sabina	12/29/2010	8/6/2013	135	\$675,000
Murphy	Michael	1/4/2012	8/6/2013	82	\$410,000
Nowak	John	1/18/2013	8/6/2013	28	\$140,000
Ostrowski	Richard	5/27/2011	8/6/2013	114	\$570,000

Ovesen	Joar	6/13/2012	8/6/2013	59	\$295,000
Pangert	Benjamin	1/24/2011	8/6/2013	132	\$660,000
Payne	George	1/20/2011	8/6/2013	132	\$660,000
Petty	Todd	1/22/2013	8/6/2013	28	\$140,000
Polo	Michael	4/10/2012	8/6/2013	69	\$345,000
Rankin	Thomas	8/23/2012	8/6/2013	49	\$245,000
Rougeau	Carl	2/17/2011	8/6/2013	128	\$640,000
Scantling	Charles	11/14/2011	8/6/2013	90	\$450,000
Smith	Mark	12/26/2010	8/6/2013	136	\$680,000
Smith	William	5/10/2011	8/6/2013	117	\$585,000
Sutfin	Brooke	7/14/2011	8/6/2013	107	\$535,000
Swenson	Karen	6/17/2011	8/6/2013	111	\$555,000
Thompson	Edward	6/4/2012	8/6/2013	61	\$305,000
Tillwach	Paul	1/20/2011	8/6/2013	132	\$660,000
Treadwell	Jeff	5/10/2012	8/6/2013	64	\$320,000
True	Lloyd	8/29/2011	8/6/2013	101	\$505,000
Ventzke	Craig	3/2/2011	8/6/2013	126	\$630,000
Vicars	Mark	2/1/2011	8/6/2013	131	\$655,000
Warga	David	6/13/2012	8/6/2013	59	\$295,000
Wilmot	Daniel	8/31/2011	8/6/2013	100	\$500,000
Wilson	Anthony	10/7/2010	8/6/2013	147	\$735,000
					\$28,035,000