

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

WEGNER AUTO COMPANY, INC., a South
Dakota corporation, and the SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION, an agency of
the State of South Dakota,

Plaintiffs,

vs.

LES SUMPTION d/b/a S&S Communications and
S&S COMMUNICATIONS, a South Dakota general
partnership,

Defendants.

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CIV 09-483

**AFFIDAVT IN SUPPORT OF
MOTION TO JOIN AS
PARTIES PLAINTIFF AND
APPLICATION FOR
DEFAULT JUDGMENT**

John J. Smith, Special Assistant Attorney General and attorney for the South Dakota Public Utilities Commission ("Commission"), a Plaintiff in this action, states the following pursuant to SDCL 15-6-55(a) in support of Plaintiffs' Motion to Join as Parties Plaintiff and Application for Default Judgment:

1. Plaintiffs commenced this action on November 18, 2009, by service of the Summons and Complaint by mail on Defendants' attorney, Clair R. Gerry, who represented to affiant both verbally, via email, and by execution of the Admission of Service of Summons and Complaint by Mail that he was authorized to accept service by mail on Defendants' behalf. Defendants, through their attorney, admitted service of the Summons and Complaint on November 20, 2009. See Exhibit A.

2. The Notice and Admission of Service of Summons and Complaint by Mail stated in the last paragraph: "If you do complete and return this form, you or the above-named Defendants must answer within thirty days. If you fail to do so, judgment by default may be taken against your clients, the above-named Defendants, for the relief demanded in the Complaint."

3. Prior to Plaintiffs' service of the Summons and Complaint by mail, Defendants' attorney stated to affiant that Defendants would accept service by mail and did not intend to defend this action. To the knowledge of affiant after inquiry of the Commission's administrative staff and counsel for Plaintiff Wegner Auto, Defendants have not served an answer or any other pleading in this case upon the Plaintiffs or any of them, other than the Admission of Service of Summons and Complaint by Mail.

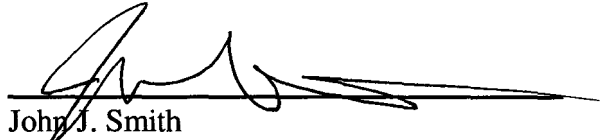
4. Defendants have neither paid anything to the Commission in satisfaction of the \$471,890.98 in damages plus prejudgment interest awarded by the Commission in Docket CT05-005 nor given any indication to the Plaintiffs or any of them that they intend to do so.

5. Defendants have executed and performed a Voluntary Surrender Agreement pursuant to which, to the best knowledge and belief of affiant, all assets of S&S Communications, a general partnership, were surrendered to Aberdeen Finance Corporation in lieu of foreclosure. See Complaint Exhibit B.

6. On November 18, 2009, Plaintiffs also filed and served by mail upon Defendants, and on each of the 131 Damages Awardees other than Wegner Auto, the Summons and Complaint (exclusive of exhibits to the Complaint which all Damages Awardees had previously received in the CT05-005 proceedings), Plaintiffs' Motion to Join as Parties Plaintiff ("Motion") and Exhibits thereto, an Objection to Joinder as Party Plaintiff and Opt-Out form and self-addressed, stamped envelope for return of the Opt-Out form if desired, and a letter explaining the purpose of the opt-out form. The Motion seeks to join the other Damages Awardees in this action as plaintiffs in conformity with the process contemplated by SDCL 49-13-27.

7. Plaintiffs have received no completed Objection to Joinder as Party Plaintiff and Opt-Out forms from any of the 131 Damages Awardees sought to be joined nor any other communications from any of them indicating any objection to the joinder process or receivership appointment requested by the Plaintiffs.

Dated this 21st day of September, 2010.



John J. Smith
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
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fax (866) 757-6031
email john.j.smith@state.sd.us

Attorney for Plaintiff, South Dakota Public
Utilities Commission

On this 21st day of September, 2010, came before me, a Notary Public in and for the State of South Dakota, John J. Smith, who is well known to me and who, having been first duly sworn, executed the foregoing Affidavit in my presence.

(SEAL)



Notary Public

My Commission Expires:

TINA DOUGLAS
My Commission Expires
April 14, 2011

Exhibit A

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CIV 09-483

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NOV 23 2009

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**ADMISSION OF SERVICE
OF SUMMONS AND
COMPLAINT BY MAIL**

ADMISSION OF SERVICE OF SUMMONS AND COMPLAINT

Personal service of the Summons and Complaint by mail in the above-captioned action is
hereby admitted on behalf of Defendants Les Sumption and S&S Communications by receipt of
copies thereof by mail at the office of Gerry and Kulm Ask, Prof. LLC, PO Box 966, Sioux
Falls, SD 57101 on the 20th day of NOV, 2009.

Clair R. Gerry
Attorney for Defendants Les Sumption and
S&S Communications

Date: 11-20-09

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

NOV 23 2009

Judy Addelman Clerk
By _____ Deputy