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IN THE SIXTH JUDICIAL DISTRICT
DISTRICT COURT, BOURBON COUNTY, KANSAS
CIVIL DEPARTMENT

SUSAN WALKER
f/k/a SUSAN BANCROFT,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS
OF BOURBON COUNTY, KANSAS,

Defendant.

Case No. BB-2025-CV-000015

PURSUANT TO K.S.A. CHAPTER 60

**PLAINTIFF'S RESPONSE TO THE MOTION TO SET ASIDE DEFAULT AND
MOTION FOR EVIDENTIARY HEARING**

Introduction

The Kansas Supreme Court has said “Defaults are not favored in the law but become necessary when the inaction of a party frustrates the orderly administration of justice.” *Bazine State Bank v. Pawnee Production Service, Inc.*, 245 Kan. 490, 495 (1989). This is that situation. The County was properly served. Before the motion for default was granted, the County Commissioner and the County Treasurer knew of the lawsuit, the County Counselor was emailed the lawsuit, and the County Counselor spoke to Plaintiff about the lawsuit. When the County failed to timely respond and judgment was granted against them, they filed a motion to set aside that was not truthful on multiple levels and that was insufficient to justify the application of K.S.A. 60-

260(b). This is a good reason for the court to deny the motion, because to do otherwise would reward the County for neglecting its duties and, worse, trying to cover up its knowledge of the lawsuit.

Facts

1. The Petition was filed and summons was issued and County was served by certified mail addressed to County Treasurer Patty Love, return receipt requested.

2. The return receipt was signed on 3/3/2025, and the box checked said “agent” and was signed for by “D. Yeager,” who is the assistant County treasurer. Ex. A.

3. According to news reports, the County treasurer would testify that before the lawsuit was delivered to her office, she was notified by one of the County commissioners that a lawsuit was coming in the mail. Ex. B¹

4. News reports suggest that the County Treasurer will testify that though Yeager signed for the Petition, Yeager did “pass it along” to the County Treasurer prior to the default judgment being entered. Ex. B.

5. The same news reports suggest that the County Treasurer then delivered the Petition to one of the County Commissioners prior to the default judgment being entered. The County Commissioner affirms to receiving it by at least March 25. Ex. B.

6. The Petition was emailed to County Attorney Bob Johnson, with a copy to one of the County Commissioners on March 25, 2025, prior to the motion for default judgment being filed. Ex. C, email to Johnson and Whisenhunt.

7. Despite this, in the Motion to Set Aside, the County falsely alleged that the Petition “was not subsequently [after it was picked up and signed for] given to the Treasurer.” Motion, ¶4.

¹ News reports are clearly not evidence, which justifies an evidentiary hearing so that those involved can be put under oath.

8. The Motion falsely alleges that the first time the County learned of the lawsuit was after default judgment was granted. Motion, ¶5

9. The Motion falsely alleges that “Counsel was unaware there was a lawsuit pending in district court and therefore could not adequately defend the County’s interest. It is clear that while the petition was received by an employee of the County, **the petition was never forwarded to the treasurer or counsel for the County.**” (emphasis added.) Motion, ¶11.

10. The Motion falsely alleges “Defendant simply was never aware Plaintiff filed any allegations in this case. The moment Defendant became aware Plaintiff filed a complaint, the undersigned counsel was notified...Defaults are necessary when a party refuses to act.” Motion, ¶18.

11. The County Attorney did have notice because prior to the default he said to Plaintiff that he needed her attorney’s contact information so he could talk to the attorney about settling the lawsuit. Ex. D, Declaration of Susan Walker.

ISSUES PRESENTED

1. Has the County presented challenges that would justify setting aside the default judgment pursuant to K.S.A. 60-255(b) and 60-260(b), including that its failure was due to excusable neglect and it has presented a meritorious defense and that Plaintiff will not be prejudiced?

ARGUMENTS AND AUTHORITIES

K.S.A. 60-255(b) provides that “The court may set aside a final default judgment under K.S.A. 60-260(b)² ...and amendments thereto.” That statute allows the court to set aside a judgment for several reasons, providing:

² The statute also provides a method to set aside judgments after service by publication, but that is not relevant here. K.S.A. 60-309.

(b) On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

- (1) Mistake, inadvertence, surprise or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under subsection (b) of K.S.A. 60-259, and amendments thereto;
- (3) fraud, whether previously called intrinsic or extrinsic, misrepresentation or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

The County's Motion asks the court to set aside the judgment "pursuant to K.S.A. 60-260(b)," and cites to reasons found in (b)(1) and (4) and (6).

The Kansas Supreme Court requires that in order to set aside a default judgment, the district court must find "(1) that the nondefaulting party will not be prejudiced by the reopening, (2) that the defaulting party has a meritorious defense, and, (3) that the default was not the result of *inexcusable neglect or a willful act.*" *State ex rel. Stovall v. Alivio*, 275 Kan. 169, 172-73, 61 P.3d 687 (2003). See also, *Montez v. Tonkawa Village Apartments*, 215 Kan. 59, 59, 523 P.2d 351 (1974)("A motion to **set aside a default** may be granted whenever the court finds (1) that the nondefaulting party will not be prejudiced by the reopening, (2) that the **defaulting** party has a meritorious defense, and (3) that the **default** was not the result of inexcusable neglect or a willful act.)

"The granting of relief from a **default** judgment rests in the sound discretion of the district court and will not be disturbed on appeal absent a showing of an abuse of discretion." *Garcia v. Ball*, 303 Kan. 560, 565-66, 363 P.3d 399 (2015). A judicial action constitutes an abuse of

discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018).

To support its motion, the County makes five arguments, **none of which are supported by the law or the facts**: (1) there was not proper service because the return of service on certified mail was not signed for by the County Treasurer personally, which would make the judgment void³; (2) the County Counselor did not have actual notice of the lawsuit until after service was effectuated because the Petition was never forwarded to the Treasurer or County Counselor because of the employee who picked up the mail's excusable neglect; (4) the Motion for Default was not served on the County as required by Kansas Supreme Court Rule 118, which makes the judgment void; (5) the County has a meritorious defense, which is that Plaintiff did not perform under the express contract and there is a failure of consideration and so the court should allow it to present that defense.

A. Service on the County Treasurer by mail was appropriate as a matter of law, even if someone else picked up the mail. The statute only requires that it is addressed to the County Treasurer and a return receipt was created.

Service on a County is appropriately made by service on the County Treasurer. K.S.A. 60-304(d). Plaintiff served the Treasurer by certified mail, return receipt requested, which is provided for in K.S.A. 60-303(c), which reads, in pertinent part:

(c) Service by return receipt delivery.

(1) Service of process may be made by return receipt delivery, which is effected by certified mail, priority mail, commercial courier service, overnight delivery service or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, the date of delivery, the address where delivered and the person or entity effecting delivery.

...

(3) Service of process is obtained upon the delivery of the sealed envelope.

³ If there were not proper service or there was a violation, the judgment would be void, which would implicate K.S.A. 60-260(b)(4).

The County alleges that it was not served because though the letter was addressed to the County Treasurer, the assistant treasurer, D. Yeager, actually signed for the mail. But the statute's plain language does not require that, and it is very clearly not the law.

K.S.A. 60-303 “does not include any restrictive requirement beyond that the envelope be addressed to the person to be served and result in a return receipt. Kan. Stat. Ann. § 60-303(c)(2), (3) (2020). And the legislature has specifically indicated that service by certified mail is sufficient.” *In the Int. of A.P.*, 62 Kan. App. 2d 141, 141, 506 P.3d 988 (2022). See also, *Petrie v. Pension Advisors, Inc.*, No. 17-1021-EFM-TJJ, 2017 U.S. Dist. LEXIS 81020, at *5-6 (D. Kan. May 26, 2017)(“ 'service by return delivery on an . . . agent . . . be *addressed* to the person at the person's usual place of business.' There is no requirement in the statute that delivery be *accepted* only by that registered agent.”) and *Drummond v. Armata Logistics, Inc.*, No. 2:13-CV-2633-EFM-KGG, 2014 U.S. Dist. LEXIS 86764, at *7-8 (D. Kan. June 26, 2014)(the mail must be addressed to the proper party and delivered to the address and a return receipt must be provided, but it is not required that only the addressee pick up the mail.)

The judgment is not void for lack of service as a matter of law. The County was properly served March 3, 2025 and never filed any pleading until its Motion to Set Aside in May, 2025.

B. The summons and lawsuit were delivered to the County Counselor and the County Treasurer and a County Commissioner prior to default judgment being entered and the Motion misstates the facts when it claims the County “did not know” about the lawsuit.

In arguing that the default should be set aside because of “excusable neglect,” the Motion argues that it was a mistake or excusable neglect that when a County employee picked the mail she failed to deliver it to the County Treasurer or the County Counselor. Motion, ¶4. The Motion states, without sworn testimony, that “the Petition was never received by the Bourbon County Counselor.” Motion, ¶5. Later, it alleges “Counsel was unaware there was a lawsuit pending in

district court and therefore could not adequately defend the County's interest" Motion, ¶11. But this is not true according to the County's own employees, who told the press⁴ that they had been told to be on the lookout for the lawsuit, which was coming in the mail, that the employee who picked up the certified letter gave the lawsuit to the County Treasurer, that the County Treasurer delivered it to one of the Commissioners and that the Petition was emailed both to a Bourbon County Commissioner **and** to the County Counselor prior to the default judgment being entered. Also, the County Counselor spoke to Plaintiff prior to the default judgment being entered about the need to settle the "lawsuit." Declaration of Susan Walker, Ex. D.

The court cannot rely on these misrepresentations by the County to relieve them of their failure to comply with its obligations. It cannot be "excusable neglect" if multiple members of the County management knew of the lawsuit's existence and the County Counselor did too and no one did anything. In fact, in *State ex rel. Stovall v. Alivio*, 275 Kan. at 172-73, the Kansas Supreme Court affirmed the denial of a similar motion because it was "inexcusable neglect" when "three different people at three different times at two different locations received notice of the lawsuit," and did nothing.

Also, if the failure to defend the lawsuit was not willful or reckless, the misrepresentations to the court in the Motion to Set Aside certainly were. The County absolutely had repeated notice of the lawsuit and rather than admit that, it engaged in a cover up. This is in no way "excusable neglect."

- C. **Supreme Court Rule 118 does not require that the motion for default be served on the County when it ignored the original properly served Petition and when the amount of damages claimed is in the Petition.**

⁴ The employee who picked up the mail also posted this description repeatedly on social media.

The Motion argues that Kansas Supreme Court Rule 118(d) required that it be notified of the motion for default. That rule does not apply for two reasons. First, having not responded to the court to a properly served Petition⁵ the County did not come within the K.S.A. 60-255 requirement that it be notified. “Notice is required to those who have 'appeared in the action.' Informal communications between parties and between a party and opposing counsel are not an appearance under K.S.A. 60-255(a). An appearance must be by contact with the court sufficient to place the court on notice of the intent of the party to defend the suit.” *Rose & Nelson v. Frank*, 25 Kan. App. 2d 22, 25-26, 956 P.2d 729 (1998).

Likewise, Kansas Supreme Court Rule 118(d) by its very title does not apply to this claim. The Rule is titled STATEMENT OF DAMAGES WHEN PLEADING DOES NOT DEMAND SPECIFIC AMOUNT. The Amended Petition very clearly demanded a specific amount. The Rule also says “When a pleading contains a demand for money damages which states only that the amount sought as damages is in excess of \$75,000, as provided in K.S.A. 60-208(a)(2), a party against whom relief is sought may serve on the party seeking relief a request for the actual amount of monetary damages sought.” The Amended Petition did not “state only that the amount sought as damages is in excess of \$75,000.” Supreme Court Rule 118(d) clearly does not apply here⁶.

D. The motion does not provide evidence of a meritorious defense, which was their burden when asking the court to set aside a default.

⁵ And, as Plaintiff’s counsel told the court in the original hearing, the County did not respond to her earlier demand letter, though a member of the County commission at the time posted it on social media, which indicates it was received. Also, she spoke to the County Counselor about Plaintiff’s claim on the phone more than 30 days before filing suit and he promised to follow up, but did not.

⁶ The part of the Rule cited in the Motion makes it clear that the Rule does not apply. (d) Default Judgment. Before a default judgment is taken in an action subject to this rule, **the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken.** Notice must be given by return receipt delivery, or as the court orders, at least 14 days before the date judgment is sought. The Petition had given notice of that amount.

“It is appropriate—and probably necessary—for a trial court to consider evidence beyond the bare pleadings to determine whether it should set aside a default judgment. In a motion to set aside default, a trial court should consider a variety of factors to determine whether the defendant (or would-be defendant) had a meritorious defense, and the burden of establishing a meritorious defense rests with the moving party.” *Landmark Nat’l Bank v. Kesler*, 289 Kan. 528, 534, 216 P.3d 158 (2009)(citing *Canaan v. Bartee*, 272 Kan. 720, 731, 35 P.3d 841 (2001)).

The motion provides **nothing** in support of a meritorious defense, though that is clearly the County’s burden. All that is alleged in the Motion is that it denies Plaintiff’s allegations and that “Plaintiff failed to perform under an express contract” and “failure of consideration.” Motion, ¶16. Making general denials of claims without any corresponding evidence does not present a “meritorious defense” as a matter of law. *Fsst Fin. Servs. v. Native Payment Servs.*, 2020 Kan. App. Unpub. LEXIS 167, *24-25 (Kan. Ct. App. March 20, 2020)(Affirming trial court’s refusal to set aside default when no meritorious defense was presented.)

Defendant here presented no evidence, just vague words not even tied to any specific facts. But Plaintiff’s ironclad breach of contract claim is that the contract had specific requirements to terminate and the County’s failure to comply with the contract’s specific termination language meant the contract was not terminated when the County announced that “all contracts are canceled.” See *Macke Laundry Serv. Ltd. Partnership v. Mission Assocs.*, 19 Kan. App. 2d 553, 873 P.2d 219 (1994); *Kirk v. NCI Leasing, Inc.*, 2009 Kan. App. Unpub. LEXIS 190 (Kan. Ct. App. Jan. 16, 2009); *Am. Outdoorsman, Inc. v. Pella Prods.*, 2006 Kan. App. Unpub. LEXIS 926 (Ct. App. Oct. 20, 2006) *rev. denied* 283 Kan. 930 (2007) and cases cited therein. There is no dispute that the County thought they “canceled” her contract and deleted her salary from the budget and eventually suggested she leave that job and run for elected office and that this triggered a

severance payment. There is also no dispute that the contract's plain language provided that she receive 28 days' vacation in excess of those acquired by other employees. Whether she "failed to perform," does not matter because the contract says explicitly that she was entitled to the payment as long as she was not terminated for an "unethical or illegal act involving personal gain." The County had a method within the contract to terminate her for these reasons but it has never terminated her for these reasons. See Ex. E, the Contract, at paragraph 10 A. Neither of the County's statements—both of which are devoid of evidence—could meet their burden to convince the court that a default should be set aside because otherwise they would be deprived of a "meritorious defense." They needed to do articulate this in the motion along with factual support and they did not.

E. Plaintiff is prejudiced by having to incur attorney's fees for drafting and arguing the motion for default and for responding to this motion.

Had the County responded to the Court or counsel when they obviously had notice of the lawsuit, counsel would not have had to draft the default motion, drive to Ft. Scott to present it to the court, or research and draft this lengthy and legally dense response to the Motion to Set Aside. It is not credible to say that Plaintiff's incurring attorney's fees for extra work required by the County's default did not prejudice Plaintiff. This is evidence that the court should take into account in deciding whether to grant the motion.

If the court grants the motion, which Plaintiff does not think it should do, there is precedent for the court to order the County to cure the prejudice by requiring the County to pay Plaintiff's attorneys' fees for the unnecessary work caused by its failure to timely respond to the legally served Petition. *Petrie v. Pension Advisors, Inc.*, No. 17-1021-EFM-TJJ, 2017 U.S. Dist. LEXIS 81020, at *14-15 (D. Kan. May 26, 2017).

Also, some defenses must be timely plead in an Answer or they are waived. When a party fails to respond to a Petition, it waives those waivable defenses, which it cannot raise again after a default judgment. *Akesogenx Corp. v. Zavala*, 55 Kan. App. 2d 22, 37, 407 P.3d 246 (2017). If the court sets aside the default, it should rule that the County cannot later raise any waivable defenses.

CONCLUSION

Plaintiff admits that it is unusual to refuse to set aside a default judgment. But when the County Treasurer, the County Commissioner and the County Counselor all had notice but never took any steps to answer, it is difficult to say it is “excusable neglect.” Then, when the Motion to Set Aside is based exclusively on misrepresentations of who knew what when, the court must rule that cover up is “inexcusable.” Finally, the County has the burden to show the court that it needs a trial to put forth its “meritorious defense.” It has not done so. The motion should be denied.

Respectfully submitted,

HITE, FANNING & HONEYMAN L.L.P.

By /s/ Gaye B. Tibbets

Gaye B. Tibbets #13240

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2025, I electronically filed the foregoing *Plaintiff's Response to the Motion to Set Aside Default and Motion for Evidentiary Hearing* with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Gaye B. Tibbets
Gaye B. Tibbets

\$199K judgment deepens tensions over whistleblower retaliation claims

PUBLISHED MAY 20, 2025 BY MATT RESNICK



*The Bourbon County Courthouse in Fort Scott, Kansas.
(Credit: Matt Resnick)*

A former Bourbon County employee at the center of the Legislature's expanded whistleblower protections act was recently awarded a \$199,000 default judgment in a civil lawsuit, but controversy swirls over the handling of the case by county leaders.

Former elected officials named in the litigation filed in February by Susan Walker, the county's former finance director, are pushing back against claims of unethical conduct. A May 14 motion from county officials asking the court to reverse the decision stated that the county was not properly served.

Conflicting accounts from county officials over the handling of the case have emerged over the past week. The motion contends that the summons never made it to County Counselor Bob Johnson. Had Johnson been notified that county personnel received the parcel, the Iola-based attorney would have then had 21 days to issue a formal response. County commissioners discussed the matter with Johnson during a closed executive session at Monday night's commission meeting.

1 / 4

EXHIBIT B

County's response to suit

According to the filing, the parcel was signed for but was never delivered to its recipient — County Treasurer Patty Love, who is disputing key points contained in the motion.

Love told State Affairs that County Commission Chair Brandon Whisenhunt gave her advance notice she would be receiving the document. Love said she found it odd when Whisenhunt informed her that the summons was erroneously addressed to her by Walker's Wichita-based law firm — Hite, Fanning, and Honeyman.

Love also said that one of her subordinates signed for the letter and passed it along to her, plainly disputing the court filing's contention that "it was not subsequently given to the treasurer."

"[Whisenhunt] said when I received it, to call him," Love said. "When I called him, he said to put it on his desk in the commission room. And that 's what I did."

Whisenhunt confirmed with State Affairs that he was tipped off by the County Clerk's office that they were tracking the letter's arrival to the County Courthouse. Whisenhunt said he couldn't recall if he was provided the info by Walker herself, or an assistant in the clerk's office.

"I got a phone call from the clerk's office," Whisenhunt recounted. "They said there is a letter going to the treasurer that you need to go pick up in a couple days."

In a thickening plot, Whisenhunt said he asked Deputy County Clerk Jennifer Hawkins to scan the court documents and send them to Johnson. Hawkins' email, obtained by State Affairs, confirms that Love's office signed for the letter on March 3 — but Hawkins didn't send the documents to Johnson until March 25. Love added that soon afterward she received a second letter from the law firm and forwarded it to Whisenhunt. But Whisenhunt told State Affairs that he only received the March 3 letter, and not until March 25.

Love contends she phoned Whisenhunt notifying him of the first letter on March 4. As for the second letter, Love said there was some lag time in notifying Whisenhunt because she was hospitalized with an undisclosed ailment.

Whisenhunt said he has nothing to hide, and that he's "a little bit upset" with Johnson over the email fiasco. He also said he wasn't "going to throw [Love] under the bus" for the lag time in notifying him of the document.

"I did my job, and she did what I asked her to do when she finally got back in the office," he said.

Fellow first-term commissioner David Beerbower said he was informed by Johnson that he had “no knowledge that the lawsuit was even there.”

“The lawsuit doesn’t involve me personally, but it involves the Bourbon County taxpayers,” Beerbower said. “So I want to make sure that they’re well-represented in any decision that we make moving forward.”

Retaliatory measures?

Walker, who was tapped by county commissioners for the role of finance director in 2022, said she was retaliated against after pushing back on financial and budgetary items. She also has accused commissioners of plotting to eliminate her position from the county budget while she was still under contract. In written testimony, Walker stated that “arrogance, dishonesty, and unethical behavior has threatened the lifelong career I have built in a community that I love and call home.” Walker previously confirmed with State Affairs that she has also lodged a formal complaint with the Kansas Human Rights Commission.

“I was coerced to run for a public office because my job was being threatened to be eliminated as a possible political move,” Walker said in the written testimony. “Behind closed doors, things were said that led me to believe that I would not have a job if I didn’t run for a public office that paid \$35,000 less than what I was making.”

Walker alleges that commissioners told her that if she ran for office that her \$95,000 salary “would follow.” Walker ultimately ran unopposed for County Clerk and won the seat in November. She filed suit against commissioners when the \$95,000 salary did not materialize.

“Since there is not a current law to protect me, I am fearful of sharing much detail on the subject with you,” she said in testimony.

Despite multiple attempts, Walker could not be reached for comment.

House Bill 2160, the bipartisan legislation expanding whistleblower protections to local government workers, was sponsored by Republican Rep. Carrie Barth and signed into law by Gov. Laura Kelly in April. Previously, whistleblower protections in Kansas only extended to state and federal workers.

Former Bourbon County Commissioner Clifton Beth, who is named in the suit, told State Affairs that Walker’s whistleblower claims were not properly vetted by Barth, the Baldwin City lawmaker who made Walker’s case a centerpiece of her legislative pursuit. While Walker ultimately delivered written testimony, Barth told State Affairs that she personally reached out to Walker in hopes she would testify in person.

Beth, meanwhile, has called Walker’s whistleblower claims “all bulls****,” adding

that the allegations are “nonsense” and “completely false.” He said he is confident a yet-to-be disclosed independent investigation into Walker’s claims will uncover the truth.

Beth added that he’s looking forward to his day in court. Jim Harris, another former county commissioner named in the case, told State Affairs that he envisions delivering compelling testimony against Walker.

“I’m sure there will be a hearing and I will be the star witness,” Harris said.

Matt Resnick is a statehouse reporter at State Affairs Pro Kansas/Hawver’s Capitol Report. Reach him at mresnick@stateaffairs.com.

Sent from my iPhone

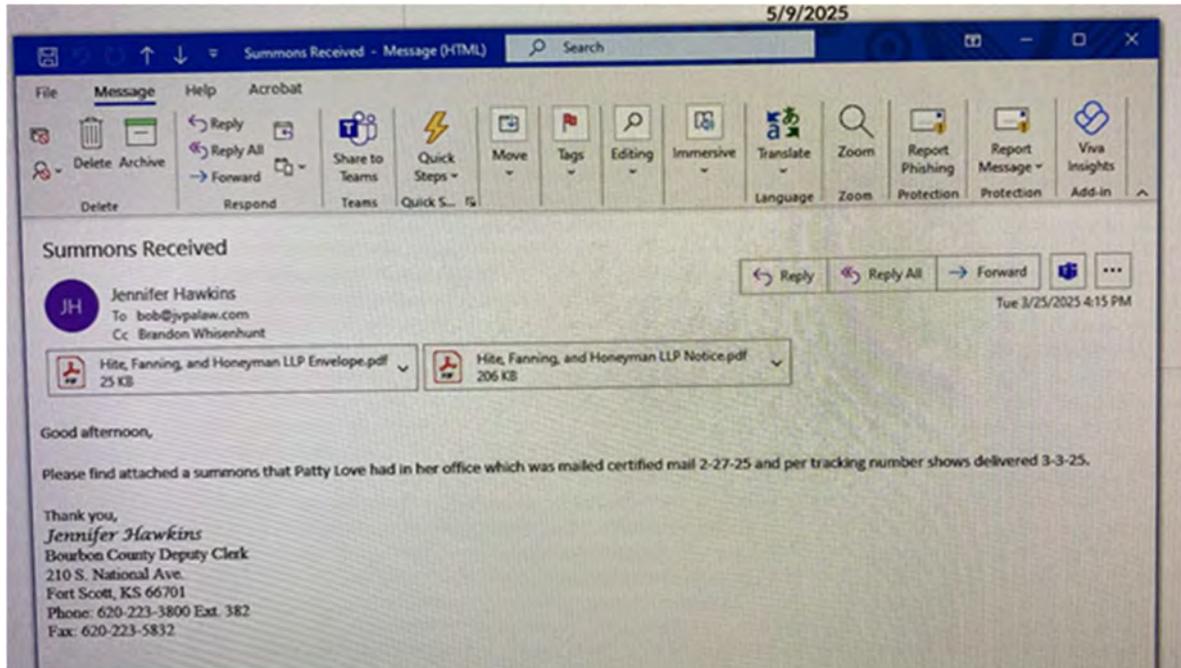


EXHIBIT C

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IN THE SIXTH JUDICIAL DISTRICT
DISTRICT COURT, BOURBON COUNTY, KANSAS
CIVIL DEPARTMENT

SUSAN WALKER f/k/a SUSAN BANCROFT, Plaintiff, vs. BOARD OF COUNTY COMMISSIONERS OF BOURBON COUNTY, KANSAS, Defendant.	Case No. BB-2025-CV-000015
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PURSUANT TO K.S.A. CHAPTER 60

DECLARATION OF SUSAN WALKER

I, Susan Walker, formerly known as Susan Bancroft, declare the following facts of which I have personal knowledge:

1. I am the County Clerk for Bourbon County and I work in the courthouse.

2. I knew that in late February or early March my attorney was going to serve the county by certified mail to the County Treasurer. We did not think it would be appropriate to serve the County by serving the County Clerk by mail, as that was my role.

3. I told Brandon Whisenhunt during that time frame that he should be sure to have the County Treasurer's office be on the lookout for an envelope from my lawyer.

4. When the lawsuit arrived in the County Treasurer's office, the County Treasurer was out on leave. Her Deputy Treasurer, Diane Yeager, was acting as County Treasurer in her absence. I have seen the return receipt of the certified letter and it says that Diane Yeager picked up the envelope with the summons and Petition in it on March 3, 2025. She did not tell me this.

5. I had told my deputy clerk, Jennifer Hawkins, who was

EXHIBIT D

helping in the County Treasurer's office while the Treasurer was on leave, to be on the lookout for the lawsuit, which would be in an envelope from my attorney.

6. Jennifer told me in late March that she discussed the lawsuit with the County Treasurer, who had returned to the office part-time, and the Treasurer handed Jennifer the envelope with the summons and petition and told Jennifer to email it to Brandon Whisenhunt and to the County Counselor.

7. Brandon Whisenhunt told me sometime in late March that the lawsuit had arrived and had been sent to the County Counselor.

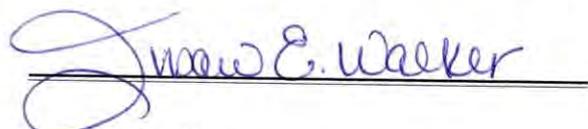
8. My assistant later told me that on the same date that the County Treasurer gave her the envelope with the pleadings in it, she emailed a copy of them to County Commissioner Brandon Whisenhunt and to Bob Johnson. She gave me a copy of the email, which is attached as Ex. 1 to this declaration and is the same email that is marked as Ex. C to the Motion to Set Aside Default Judgment.

9. At some time after the lawsuit was served but before the Motion for Default Judgment was heard, the County Counselor, Bob Johnson, asked me for my lawyer's phone number so he could contact her to discuss settling the lawsuit. I sent a text message from my personal cell phone to him with her contact information.

10. I attended the hearing on the Motion for Default Judgment on May 8. At that time, I felt certain that several people in the county government and the County Counselor were aware of the lawsuit.

11. Given all of these statements, I was quite surprised when I read in the Motion to Set Aside the Default Judgment that the county did not learn of the Petition until after the Default Judgment was granted.

I declare, verify and certify under penalty of perjury that each of the paragraphs above are true and correct.



Susan Walker

05/27/25

Date

Start Date: 12-2-21

FINANCE DIRECTOR

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 30 day of November, 2021 by and between BOURBON COUNTY COMMISSIONERS, KANSAS, (hereinafter referred to as "County"), and SUSAN BANCROFT, (hereinafter referred to as "EMPLOYEE"), both whom understand as follows:

WHEREAS, the COUNTY desires to employ the services of SUSAN BANCROFT as the County Finance Director of Bourbon County, Kansas.

WHEREAS, the SUSAN BANCROFT, having accepted employment as Finance Director for Bourbon County, Kansas and the County Commission desiring to clearly establish conditions of employment and working conditions, it is hereby mutually agreed as follows:

WITNESSETH:

1. DUTIES. COUNTY hereby engages EMPLOYEE as Finance Director of Bourbon County, Kansas, and EMPLOYEE hereby accepts said employment to perform the functions and duties specified by the Bourbon County Commissioners that are legally permissible and proper duties and functions as the County Commission shall from time-to-time assign. County Commission appoints SUSAN BANCROFT as Finance Director and may remove her at any time subject to the provisions of this Agreement.
2. COMPENSATION. COUNTY agrees to pay EMPLOYEE for her services at an annual base salary rate of Ninety-Five Thousand and zero Cents (\$95,000) payable in installments at the same time as other employees of the COUNTY are paid. COUNTY agrees to increase said base salary and/or other benefits of EMPLOYEE in such amounts and to such an extent as the County Commission may determine on the basis of an annual review of said EMPLOYEE made at the same time as similar consideration is given to other employees generally.
3. DUES. The COUNTY agrees to budget and pay the professional dues and subscriptions of EMPLOYEE necessary for her continuation and full participation in national, regional, state and local associations and/or organizations necessary and desirable for her continued professional participation, growth, advancement, and good of the COUNTY. *County sb*
4. PROFESSIONAL DEVELOPMENT. The COUNTY hereby agrees as follows:
 - A. To budget for and to pay the travel and subsistence expense of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and adequately pursue necessary official and other functions for COUNTY including, but not limited to, the annual conference of the Government Finance Officers Association of Kansas, Kansas Association of Counties and for such regional, state, and local governmental groups and committees thereof which EMPLOYEE serves as a member. All expenses shall be itemized on COUNTY expense vouchers and any expenditure for lodging and other expenses shall be accompanied by a receipt.
 - B. To budget and pay for the travel and subsistence expense of the EMPLOYEE for short courses, institutes, and seminars that are necessary for EMPLOYEE's professional development and for the good of the COUNTY.

EXHIBIT E

5. HEALTH INSURANCE. The COUNTY agrees to pay the cost for a single coverage to the EMPLOYEE.

6. SICK LEAVE. The COUNTY agrees to provide two (2) weeks sick leave per calendar year.

7. VACTION AND OTHER BENEFITS. The COUNTY agrees to provide twenty-eight (28) days of paid vacation each year effective with the date of employment. Other vacation days will be accrued in the same fashion as other County employees under the fringe benefit package offered to the County employees (eight (8) hours each month).

8. TERM. The term of this agreement for compensation is for one (1) year but EMPLOYEE agrees to remain in the exclusive employ of the COUNTY from December 1, 2021 until December 1, 2025. The EMPLOYEE shall neither accept nor become employed by any other employer until said termination date. The EMPLOYEE shall not devote any time to teaching, consulting, or other non-county connected business without the express prior approval of the County Commission.

In the event written notice is not given by either party to this contract to the other forty-five (45) days prior to the termination date as hereinabove provided, this contract shall be extended on the same terms and conditions as herein provided, all for an additional period of one (1) year. Said contract shall continue thereafter for (1) year periods unless forty-five (45) days written notice is given prior to the time of expiration.

9. TERMINATION AND SEVERANCE PAY.

A. In the event EMPLOYEE is terminated by the COUNTY COMMISSION before the expiration of this agreement, the COUNTY agrees to pay EMPLOYEE a lump sum cash payment equal to one hundred twenty (120) days aggregate salary, and accumulated vacation, and sick leave; provided, however, that in the event EMPLOYEE is terminated because of any unethical or improper act involving personal gain to her, then, in that event, the COUNTY shall have no obligation to pay the aggregate severance sum designated in this paragraph.

B. In the event the COUNTY, at any time during the employment term, reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all COUNTY employees, or in the event the COUNTY refuses, following written notice, to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a suggestion, whether formal or informal, by the COUNTY COMMISSION that EMPLOYEE resign, then, in that event, EMPLOYEE may, at her option, be deemed to be "terminated" at the date of such reduction or such refusal to comply with the meaning in context of the herein severance pay provision.

C. In the event the EMPLOYEE decides to voluntarily resign her position, before the expiration of the aforesaid term of employment, said EMPLOYEE shall give the COUNTY at least forty-five (45) days advance notice in writing of her intention to resign, unless otherwise agreed to by the parties. The EMPLOYEE will not be entitled to the 120 days severance pay under Paragraph 9 in the event of resignation except she shall be paid for all of her unused sick leave and vacation time.

10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The COUNTY shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of EMPLOYEE provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the County's policy or any other law.

B. The COUNTY agrees to pay EMPLOYEE'S reasonable dues in the civic organization of EMPLOYEE'S choice provided, however, that nothing beyond membership dues shall be paid. Costs of any meals, special assessments, or any other club assessment, except membership dues, shall be compensated by the COUNTY.

C. Pursuant to the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., as amended, if EMPLOYEE is sued pursuant to said act, defense of the EMPLOYEE shall be provided pursuant to K.S.A. 75-6108, as amended.

D. The text herein shall constitute the entire agreement between the parties. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. This agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of the EMPLOYEE.

IN WITNESS WHEREOF, The COUNTY, has caused this agreement to be signed and executed on its behalf by its chairman and duly attested to by its County Clerk, and the EMPLOYEE has signed and executed this agreement, both in duplicate, on the date and year first above written.

THE BOURBON COUNTY COMMISSION, KANSAS

By: _____

Lynne Oharah, Chairperson
(COUNTY-EMPLOYER)

Ashley Shelton
Ashley Shelton, County Clerk



By: _____

SUSAN BANCROFT