STATE OF KANSAS



CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027



PHONE: 785-271-3100 Fax: 785-271-3354 http://kee.ks.gov/

GOVERNOR JEFF COLYER, M.D. SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | DWIGHT D. KEEN, COMMISSIONER

NOTICE OF PENALTY ASSESSMENT

January 3, 2019

19-TRAM-239-PEN

Esteban Valenzuela, President Gordini Inc. 4021 E Bellaire St Wichita, KS 67218

This is a notice of a penalty assessment against Gordini Inc. (Gordini) for violation(s) of Kansas Motor Carrier Safety Statutes, Rules, and Regulations discovered during a compliance review conducted on November 9, 2018, by Kansas Corporation Commission Special Investigator Gary Goeller. Penalties are assessed in accordance with the FY 2019 Uniform Penalty Assessment Matrix, approved by the Commission on August 7, 2018. For a full description of the penalty(s) and terms and obligations please refer to the Order attached to this notice.

IF YOU ACCEPT THE PENALTY: Gordini has been assessed a \$100 penalty. You have thirty (30) days from the date of service of the Penalty Order to pay the penalty. Please remit payment of \$100, through your personal account with the Kansas Corporation Commission's KTRAN system located at https://puc.kcc.ks.gov/ktran/. If you have not received a letter from the Transportation Division assigning you a PIN, please contact that Division at 785-271-3145. You must have an account through KTRAN to pay the penalty owed.

The attached Order requires a representative of Gordini to attend a Commission-sponsored safety seminar within ninety (90) days from the date of the Order and to provide the undersigned Litigation Counsel with written proof of attendance. A schedule of dates and locations for safety seminars can be found at the Commission's website http://www.kcc.state.ks.us/trans/safety meetings.htm. The Order also requires your company to submit to one follow-up safety compliance review within 18 months from the date of the Order. Transportation Staff will contact your company at a later date to determine an appropriate time for this review.

IF YOU CONTEST THE PENALTY ORDER: You have the right to request a hearing. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. Gordini must file, within fifteen (15) days from the date of service of this Order, the request for hearing with the Commission's electronic filing system found at https://puc.kcc.ks.gov/e-filing/e-express/, and mail a copy of the request for hearing to the undersigned at the above address. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy to the undersigned Litigation Counsel. K.A.R. 82-1-215; K.S.A. 2017 Supp. 77-542.

IF YOU FAIL TO ACT: Failure to pay the penalty of \$100 within thirty (30) days from the date of service of the Penalty Order or failure to comply with the terms of the Order, or in the alternative, failure to provide a timely written request for a hearing, will result in the Order becoming final and may result in additional sanctions of suspension and/or revocation of your motor carrier operating authority.

Respectfully,

arly R. Masenthin,

Ahsan A. Latif Litigation Counsel (785) 271-3118

THE STATE CORPORATION COMMISSION **OF THE STATE OF KANSAS**

Before Commissioners:	Shari Feist Albrecht, Chair Jay Scott Emler Dwight D. Keen
In the Matter of the Invest	igation of Gordini)

Inc., of Wichita, KS, Regarding the Violation of) the Motor Carrier Safety Statutes, Rules and Regulations and the Commission's Authority to) Docket No. 19-TRAM-239-PEN Penalties, Sanctions and/or the Impose Revocation of Motor Carrier Authority.

PENALTY ORDER

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. JURISDICTION

Pursuant to K.S.A. 2017 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1. 1,114b and 66-1,115, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2017 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

Pursuant to K.S.A. 2017 Supp. 66-1,129a, 66-1,130 and 66-1,142b, the 2. Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. Gordini Inc. (Gordini) has common operating authority with the Commission and further operates USDOT number 2430409.

5. Esteban Valenzuela attended a Commission-sponsored Motor Carrier Education and Safety Instructional Meeting on September 12, 2016, on behalf of Gordini.

6. Gordini is a common motor carrier which primarily hauls grain, feed and hay.

III. STATEMENT OF FACTS

7. Pursuant to the jurisdiction and authority cited above, on November 9, 2018, Commission Staff (Staff) Special Investigator Gary Goeller conducted a safety compliance review of the operations of Gordini. A copy of the safety compliance review is included in this Penalty Order as Attachment "A" and is hereby incorporated by reference. As a result of this investigation, the special investigator identified one (1) violation(s) of the Motor Carrier Safety Regulations.

a. On September 4, 2018, Gordini required or permitted its driver, Esteban Valenzuela, to operate a CDL-required commercial motor vehicle, a 2012 International, VIN ending in 616964, GVWR 52,350 lbs., pulling a 2015 Timpte trailer, VIN ending in 146060, GVWR 65,000 lbs., in intrastate

commerce from Wichita, Kansas to Emporia, Kansas. This trip is evidenced by a record of duty status, a copy of which is attached hereto as Attachment "B" and is hereby incorporated by reference. At the time of this transportation, Gordini failed to make an inquiry every 12 months into the annual motor vehicle record (MVR) of its driver and maintain the response(s) of each state agency in the driver qualification file. The carrier's failure to inquire into its driver's MVR at least once every 12 months and maintain a copy of the MVR in the driver qualification file is a violation of 49 C.F.R. Part 391.25(a) and (c)(1), adopted by K.A.R. 82-4-3g, and authorized by K.S.A. 2017 Supp. 66-1,112. Staff recommends a fine of \$100.

IV. STAFF'S RECOMMENDATIONS

8. Based upon the available facts, Staff recommends the Commission finds Gordini committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

9. Additionally, Staff recommends a civil penalty of \$100 for one (1) violation(s) of the Motor Carrier Safety Statutes, Rules and Regulations.

10. Staff further recommends that a representative from Gordini be required to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and provide Litigation Counsel with written proof of attendance. A schedule of the dates and

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locations for safety seminars can be found on the Commission's website at http://kcc.ks.gov/trans/safety meetings.htm.

11. Finally, Staff recommends that Gordini submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the motor carrier at a later date to determine an appropriate time for this review.

V. CONCLUSIONS OF LAW

12. The Commission finds it has jurisdiction over Gordini because it is a motor carrier as defined in K.S.A. 2017 Supp. 66-1,108.

13. The Commission finds Gordini committed one (1) violation(s) of Kansas law that governs motor carriers, including various provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), as adopted by the Kansas Administrative Regulations, and is therefore subject to sanctions or fines imposed by the Commission.

THE COMMISSION THEREFORE ORDERS THAT:

A. Gordini Inc., of Wichita, KS is hereby assessed a \$100 civil penalty for one (1) violation(s) of Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

B. Gordini is hereby ordered to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order, and is to provide Litigation Counsel with written proof of attendance.

C. Gordini is ordered to submit to one follow-up safety compliance review within eighteen (18) months from the date of this Order. Transportation Staff will contact the carrier to set up the appointment.

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D. Pursuant to K.S.A. 2017 Supp. 77-537 and K.S.A. 77-542, any party may request a hearing on the above issue(s) by submitting a written request setting forth the specific grounds upon which relief is sought. The request may be electronically filed with the Commission's electronic filing system at https://puc.kcc.ks.gov/e-filing/e-express/, within fifteen (15) days from the date of service of this Order, and a copy of the request mailed to the Litigation Division. If you do not have access to the internet, you can mail an original and seven copies of the request to the Secretary to the Commission, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and mail a copy of the request to Litigation Counsel. A hearing will be scheduled only upon written request. Failure to timely request a hearing will result in a waiver of Gordini's right to a hearing, and this Penalty Order will become a Final Order assessing a \$100 civil penalty against Gordini, and ordering a representative from Gordini to attend a Commission-sponsored safety seminar within ninety (90) days from the date of this Order and provide Litigation Counsel with written proof of attendance, and to submit to a safety compliance review within 18 months from the date of this Order.

E. If a request for hearing is filed, attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a). For civil penalties less than \$500, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2017 Supp. 66-1,142b(e) and amendments thereto.

F. If you do not request a hearing, the payment of the civil penalty of \$100 is due in thirty (30) days from the date of service of this Order. Payment of \$100 must be made through

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your personal account with the Kansas Corporation Commission's KTRAN system located at <u>https://puc.kcc.ks.gov/ktran/</u>. You must have an account through KTRAN to pay the penalty.

G. Failure to pay the \$100 civil penalty within thirty (30) days from the date of service of this Penalty Order, *see* K.S.A. 66-1,105, and/or failure to comply with the provisions of this Order, may result in suspension of Gordini's motor carrier operating authority without further notice. Additionally, the Commission may impose further sanctions to include, but not limited to, the issuance and enforcement of revocation of authority and/or cease and desist orders, and any other remedies available to the Commission by law, without further notice.

H. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders, as necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 01/03/2019

Lynn M. Ref

Lynn M. Retz Secretary to the Commission

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ATTACHMENT "A"

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	US DOT		al: GORDII						
	2430409) Op	erating (DB						
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Review T	ype: Con	pliance R	eview (CR)						
Scope:		cipal Offic		Location of R	eview/Au	dit: Company	facility in the U.S.	Territory:	F
Operation	Types	Interstate	Intrastate						
C	Carrier:	Non-HM	Non-HM	Business: Co				4	
S	hipper:	N/A	N/A	Gross Revenu	ue:		for year ending:	12/31/2017	
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Company	Physica	I Address	;;		······································				
WICHITA	, KS 672	18-4902							
Contact	Name:	Esteh	an Valenzue						
Phone n						Fax			
E-Mail A									
Сотрапу	Mailing	Address:	s.*						
WICHITA	, KS 672	18-4902							
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		• 1	1			CDL Drivers:			

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GORDINI TRUCKING (GORDINI INC dba)

U.S. DOT #: 2430409

State #:

11/09/2018

Part A

QUESTIONS regarding this report or the Federal Motor Carrier Safety or Hazardous Materials rules may be addressed to the Office of Motor Carriers at:

This report will be used to assess your safety compliance.

Person(s) Interviewed Name:

Name: Esteban Valenzuela-Esparza

Title: President/Owner





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GORDINI TRUCKING (GORDINI INC dba)

U.S. DOT #: 2430409

11/09/2018

Part B Violations

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1 STATE	Primary: 392.2 Secondary: 8-2,125 CFR Equivalent: 383.23(a)(1)	Discovered	Checked	Drivers/Ve In Violation 1	hicles Checked 1						
Description Operating with Example Esteban Valen Trip date -11.0	out a valid CDL. zuela-Esparza	, , , , , , , , , , , , , , , , , , , 									
Driver medical card expired on 10.31.2018, Driver CDL was down graded on 11.01.2018 till 11.05.2018 Driver renewed Medical card on 11.05.2018 and emailed notification to the Kansas Dept of Revenue to re-Instate CDL privileges.											
Operated a 20	12 International KS VIN# 1000 1000 16964 KS tag 146060 KS tag#	# And a nd a	2015 TIMPTE	EKS VIN#							
2 STATE	Primary: 391.25(a) CFR Equivalent: 391.25(a)	Discovered	Checked	Drivers/Ve In Violation	hicles Checked 1						
Description Failing to make an inquiry into the driving record of each driver to the appropriate State agencies in which the driver held a commercial motor vehicle operator's license at least once every 12 months. Example Esteban Valenzuela-Esparza Trip date -09.04.2018 Last MVR was ran on 12.05. 2016 current MVR was ran on 09.12.2018 Operated a 2012 International KS VIN#											
3 STATE	146060 KS tag# Primary: 391.45(b)(1) Secondary: 391.11(a) CFR Equivalent: 391.45(b)(1)	Discovered	Checked	Drivers/Vel In Violation	Checked						
Description Using a driver not medically examined and certified during the preceding 24 months. Example Esteban Valenzuela-Esparza Trip date -11.04.2018											
Driver medical card expired on 10.31.2018, Driver renewed Medical card on 11.05.2018 Operated a 2012 International KS VIN# 1000000000000000000000000000000000000											



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2	GORDINI TRUCKING (GORDINI INC dba U.S. DOT #: 2430409	a)	State #:				
	Pa	art B Violations	j				
4 STATE	Primary: 391.51(b)(5) CFR Equivalent: 391.51(b)(5)		Discovered 1	Checked 1	Drivers In Violatio 1	/Vehicles n Checked 1	
Esteban Trip date MVR Dat	tion o maintain a note relating to the annual revie Valenzuela-Esparza 11.04.2018 te 9.12.18 d a 2012 International KS VIN#	ew of the driver's dr		required by 3 2015 TIMPTE			
5 STATE	146060 KS tag# 5 Primary: 391.51(b)(6)						
Trip date MVR Da	e Valenzuela-Esparza > -11.04.2018 te 9.12.18 d a 2012 International KS VIN# 1999 146060 KS tag# (1999)	616964 KS tag	* Control and a	2015 TIMPTI	E KS VIN#		
6 STATE	Primary: 396.3(b)(1) CFR Equivalent: 396.3(b)(1)		Discovered 2	Checked 2		s/Vehicles on Checked 2	
Example Esteban Trip date	tion o keep a maintenance record which identifie		-	al number, ye	ear, and tire s	ilze.	
	d a 2012 International KS VIN# 146060 KS tag#	616964 KS tag	# and a				
Tot	ness Rating Information: al Miles Operated 48,000 cordable Accidents 0 cordable Accidents/Million Miles 0.00		Number of Ve O per of Vehicles	OS Vehicle (ed (CR): 0 MCMIS): 0		

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0	GORDINI TRUCKING (GORDINI INC dba) U.S. DOT #: 2430409	÷	State #			
	Part	B Violations				
'our propo	sed safety rating is :	Rating Factors		Acute	Crítical	
		Factor 1:	S	0	0	
		Factor 2:	S	0	0	
	SATISFACTORY	Factor 3:	S	0	0	
		Factor 4:	S	0	0	
		Factor 5:	N	0	0	

Corrective actions must be taken for any violations (deficiencies) identified on Part B of this report.

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11/09/2018

Part B Requirements and/or Recommendations

1. For all Investigations:

Understand Why Compliance Saves Time and Money: Compliance with FMCSRs will not only save lives, but also saves your business time and money. Tracking how much your business spends on non-compliance activities can help you understand the many benefits of compliance to your business and why safety is good business.

Document and Follow Through on Action Plans: Document and follow through on action plans to ensure the actions you are taking are creating improvement in safety management and compliance.

NOTICE: A pattern and/or repeated violations of the same or related acute or critical regulations (violations of the same Part in Title 49, Code of Federal Regulations) will cause the maximum penalties allowed by law to be assessed under Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). A pattern of violations means two or more violations of acute and/or critical regulations in three or more Parts of Title 49, Code of Federal Regulations discovered during any eligible investigation. Repeated violations means violation(s) of an acute regulation of the same Part of Title 49, Code of Federal Regulations discovered in an investigation after one or more closed enforcement actions within a six year period and/or violation(s) of a critical regulation in the same Part of Title 49, Code of Federal Regulations discovered in an investigation after two or more closed enforcement actions within a six year period.

NOTICE: 49 CFR Part 391.23 requires prospective employers to, at a minimum, investigate a driver's employment information, crash record, and alcohol and controlled substances history from all employers the driver worked for within the previous 3 years.

The Pre-Employment Screening Program (PSP) is a screening tool that assists motor carriers in investigating crash history and roadside safety performance of prospective drivers. The PSP allows motor carriers to purchase 5 years of crash data and 3 years of roadside inspection data from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). Records are available 24 hours a day via Web request. Motor carriers should visit the following website for more information:

http://www.psp.fmcsa.dot.gov/Pages/default.aspx

All motor carriers and truck drivers are needed to fight against terrorism and hijacking. You could be a target. Protect yourself, your trucks, your cargo, and your facilities. Discuss with your employees/drivers the "Security Measures for Truck Drivers and Companies" which were provided and reviewed with motor carrier official. Motor carriers should visit the following website for more information:

http://www.fmcsa.dot.gov/documents/Hijacking-Brochure.pdf

FMCSA recently announced planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements is currently available to motor carriers. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012. The improvements to SMS are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents. Motor carrier's currently have the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site. The data preview may be found at http://csa.fmcsa.dot.gov/. During the data preview period, the Agency requests comments on the impacts of the changes,

For all Investigations that did not result in a Cooperative Safety Plan:

The KCC requires that you prepare a corrective action letter, addressing the measures taken to correct the violations identified within this report. Submit this letter within 30 days outlining the carrier's updated changes to their policies and procedures regarding all listed violations. Explain in detail how, as a carrier representative, you will rectify these deficiencies and prevent their reoccurrence going forward. Include any supporting documentation and evidence as indicated in the recommendations above, (example: vehicle inspections performed, proof of drug and alcohol testing in place, etc.) necessary to prove that corrective action has been taken. Mail or E-mail the letter along with copies of your supporting evidence to:





Part B Requirements and/or Recommendations

Kansas Corporation Commission Attn: Gary Davenport 1500 SW Arrowhead Rd Tópeka, KS 66604-4027 g.davenport@kcc.ks.gov

- 2. Copies of the regulations, forms, interpretations, and manuals are available from a variety of sources. Check the FMCSA website for a current list of suppliers. www.fmcsa.dot.gov/safety-security/eta/index.htm
- 3. A copy of your carrier profile can be obtained at no cost from the FMCSA Portal (https://portal.fmcsa.dot.gov/login).
- 4. Obtain a copy of each driver's driving record and review it annually.
- 5. Do not allow drivers to drive interstate unless they have been physically re-examined each 24 months.
- 6. I understand that monetary penalties will be assessed as a result of violations found in this compliance review if I fail to correct the violations discovered before future operations. I understand that a follow up review will be completed in 90 day or less and if I have failed to correct violations found then penalties will be assessed. The penalty schedule can be found at_ithis website: http://kcc.ks.gov/transportation/safety-information

Carrier representative:

Date

7. I acknowledge that these requirements/violations and/or recommendations have been discussed with me and my questions have been answered. I understand that failure to satisfactorily remedy the above-listed requirements, and/or failure to comply with Kansas Motor Carrier Safety Statutes and Regulations could result in the suspension of Gordini Inc's vehicles operating authority and/or the impoundment of Gordini Inc's vehicles.

Signed Date

8. Stay in contact with your KCC Investigator for any questions or issues with continued safety compliance. You may contact me: KCC Special Investigator Gary Goeller at 785-623-0541 or email at g.goeller@kcc.ks.gov



ATTACHMENT "B"

CARRIER. GORDINI INC. DRIVER (CHOFER) Esteban, Valenzuela Truck # 2 BEGIN DATE 9/3/18 FNO DATE 9918

MILES DRIVIN IN EACH STATE

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TUESDAY	9	4	18	517			
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THURSDAY	9	6	18	379			
FRIDAY	9	7	18	33			
SATURDAY		-					
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TOTAL	<u>,</u> ,			1267			

FUEL PURCHASES

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CERTIFICATE OF SERVICE

19-TRAM-239-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

first class mail/hand delivered on _____01/04/2019

ESTEBAN VALENZUELA, PRESIDENT GORDINI INC. 4021E BELLAIRE ST WICHITA, KS 67218-4902 info@americoltax.com AHSAN LATIF, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 Fax: 785-271-3354 a.latif@kcc.ks.gov

/S/ DeeAnn Shupe DeeAnn Shupe